

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application No.290/00491/2016
With
Miscellaneous Application No. 290/00300/2016**

RESERVED ON: 11.01.2019

Jodhpur, this the 17th January, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Chandgiram S/o Shri Harilal, aged about 72 years, resident of ward No. 20, Lalgah Jatan, District Sri Ganganagar.

.....Applicant

By Advocate : Mr Surendra Bana

Versus

1. Kendriya Vidhyalaya Sanghathan through Commissioner, 18 Industrial Area, Saheed Jeetsing Marg, New Mahroli Road, New Delhi-110016.
2. Deputy Commissioner, Kendriya Vidhyalaya Sanghathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015.
3. The Principal, Kendriya Vidhyalaya, Lalgah Jatan, District Sri Ganganagar.

.....Respondents

By Advocate : Mr. Avinash Acharya.

ORDER

This Original Applications has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

- a. By an appropriate order or direction, impugned order dated 01.10.2014 (Annex. A/1) may kindly be quashed and set aside.

- b. Respondents may kindly be directed to include the period of suspension of applicant in the qualifying service for pension and other retiral benefits.
- c. Direct the respondent authorities to release pension to the applicant at the earliest with interest for delayed payment.
- d. Any other appropriate order or direction which may be considered to be just and proper may be granted in favour of the applicant.
- e. Cost of the application may kindly be awarded to the applicant.

2. The case of the applicant is that he was appointed as Class IV employee on 29.07.1986 and was discharging his duties sincerely. He had carried out his duties for around 16 hours instead of 08 hours from December, 1989 to July, 1991. After making protest against the said working hours and after request for payment of overtime, he was suspended. The applicant thereafter submitted an industrial dispute on the ground that the respondents were asking him to work for more than 16 hours a day by the respondents. Thereafter the applicant as well as respondents came to compromise on 15.01.2001 wherein the applicant withdrew his claim bearing number 8/95 from Labour Court and the respondents reinstated the applicant as per norms of the KVs. Also, the respondents revoked the suspension of the applicant vide order dated 05.02.2001 and permitted the applicant to resume his duties. Thereafter, the Principal, KVS, i.e. respondent No. 3 issued a memorandum dated 30.04.2002 to the applicant stating that he was not fit for his duties and proposed compulsory retirement for him. The applicant submitted reply to

the said memorandum and denied the charges levelled against him vide his reply dated 09.05.2002. Respondent No. 3 ignoring the reply of the applicant passed an order of compulsory retirement dated 24.06.2002 in case of the applicant. Vide letter dated 08.07.2003 (Annex. A/8), respondents informed the applicant that on deducting the suspension period, i.e. from 22.08.1991 to 04.02.2001 since the applicant had not completed 10 years of service, he is not entitled for pension. The applicant thereafter filed an OA against the said order dated 24.06.2002 and the communication dated 08.07.2003 bearing number OA No. 205/2003. The said OA was decided on 29.01.2014 wherein this Tribunal quashed and set aside the order dated 24.06.2002 as well as the communication dated 08.07.2003 and directed the respondents to decide the representation of the applicant and pass an appropriate order within 03 months from the date of receipt of representation of the applicant. On the said representation and as per the directions of this Tribunal, the applicant preferred a representation dated 05.07.2014 and the respondents vide order dated 01.10.2014 disposed of the said representation stating that he is not eligible for pension due to incomplete minimum qualifying service as per CCS (Pension) Rules, 1972. Therefore, the applicant approached this Tribunal being aggrieved by the said order denying retiral benefits, pension and other dues ignoring the suspension period to be

treated as dies non against the spirit of compromise entered into between both the parties before Labour Court.

3. The respondents have filed reply dated 08.09.2017 stating that the present OA is barred by limitation and also the subject matter filed by the applicant does not come under the purview of recurring cause of action and therefore, the present OA deserves to be dismissed as the applicant has failed to explain the delay of about 02 years in filing the present OA before this Tribunal. The respondents relied upon the case of Administrator of Union Territory of Daman and Diu Vs R.D. Valand, 1995 Supp (4) SCC 593 wherein the Hon'ble Apex Court has held that the Tribunal was not justified in interfering with the stale claim of the respondents.

Also from bare perusal of the impugned order dated 01.10.2014, it is clear that it is self explanatory and the same is reasoned and speaking order passed on directions of this Tribunal in OA No. 205/2003. It is clear that the applicant was suspended vide order dated 22.08.1991 on account of various complaints against him with regard to misconduct/misbehaviour/indiscipline. The applicant was paid subsistence allowance during period of his suspension as per CCS (CCA) Rules, 1965. Thereafter the applicant was issued charge sheet under Rule 14 of CCS (CCA) Rules and an enquiry was conducted after providing due opportunity to applicant to

defend his case. All the charges framed against the applicant were proved in the enquiry proceedings. Thereafter suspension order of the applicant was revoked by the competent authority vide order dated 05.02.2001. After giving memorandum to the applicant on 30.04.2002, the penalty of compulsory retirement w.e.f. 01.05.2002 was imposed on the applicant by respondent No. 3 vide order dated 24.06.2002. The respondents state that the applicant had filed a case No. LCC/95 before the Labour Court for entitlement of overtime allowance. The same was withdrawn by the applicant at his own discretion. Thereafter suspension order was revoked vide order dated 05.02.2001 keeping in view settlement taken place before the Labour Court. After revocation of suspension, he was paid pay & allowances w.e.f. 05.02.2001 to 30.04.2002 vide order dated 24.06.2002. The respondents further states that the applicant was informed vide letter dated 08.07.2003 that whatever admissible dues were payable to the applicant, had already been paid to him. He was paid retirement cum service gratuity, leave encashment, GPF, arrears of pay etc. The respondents also informed the applicant that he was not entitled to get any pension as he does not possess the minimum qualifying service required for pension as per CCS (Pension) Rules. It was further intimated to the applicant that a reasoned and speaking order dated 23.09.2014 was passed pertaining to the entire period of suspension from 22.08.1991 to 04.02.2001 be treated as dies-

non for all purposes including retiral benefits. The said order was sent to the applicant by registered post dated 27.09.2014. The respondents vide order dated 01.10.2014 have clarified that the applicant is not entitled for pension as he does not possess the minimum qualifying service and all admissible dues had already been paid to him. It was also clarified that no amount is due to the applicant. Thus, the respondents have stated that their action is justified in eyes of law since the said order has been passed as per rules and further stated that OA deserves to be dismissed since it lacks any merit.

4. The applicant filed MA No. 290/00300/16 for condonation of delay in approaching this Tribunal. The grounds raised by the applicant are that the cause agitated by the applicant in the present OA is a recurring cause of action, therefore, delay deserves to be condoned. Further, the applicant is an old person and suffering from various illness so he could not approach this Tribunal within statutory time, therefore, the delay in filing the present OA is bonafide and deserves to be condoned.

The respondents filed reply to the same and stated that the order dated 01.10.2014 is passed as per the directions of the Tribunal in OA No. 205/2003. The applicant filed the present OA on 27.09.2016. The applicant has not submitted any details pertaining to his illness and has not given any strong and bonafide reasons for delay to be condoned. The respondents

stated that the inordinate delay of more than 02 years does not deserve to be condoned. The respondents relied upon the judgments of Hon'ble Apex Court in Union of India Vs O.P. Saxena, (1997) 6 SCC 360, Ramesh Chand Sharma Vs Udham Singh Kamal, (1999) 9 SCC 304, Administrator of Union Territory of Daman and Diu Vs R.D. Valand, 1995 Supp (4) SCC 593 and Govt. of India Vs Shivram Mahadu Gaikwad, 1995 Supp (3) SCC 231. Also pertaining to the submission made by the applicant that there is recurring cause of action in the present OA was denied by the respondents. The respondents, therefore, stated that as per Section 21 of the Administrative Tribunals Act, 1985, the applicant has not approached this Tribunal within time and has not given any reasonable and lawful explanation for the inordinate delay in filing the OA. Respondents thus stated that OA deserves to be dismissed on the ground of delay as the applicant had already been paid all his dues well within time and he is not entitled to pension as he does not possess minimum qualifying service required for the purpose of pension.

5. Heard Mr Surendra Bana, learned counsel for the applicant as well as Mr Avinash Acharya, learned counsel for the respondents and perused the record.

6. Learned counsel for the applicant while reiterating the submissions made in the OA, stated that as per the compromise arrived before the Labour Court, the respondents were required

to treat the period of suspension from 22.08.1991 to 05.02.2001 as qualifying service by ignoring the suspension period as the same has been revoked by them vide order dated 05.02.2001 and the applicant was permitted to resume his duties. He further stated that inspite of compromise arrived at the Labour Court, the respondents awarded compulsory retirement to the applicant vide order dated 24.06.2002 and vide communication dated 08.07.2003, informed that applicant that on deducting the suspension period, he is not entitled for pension as he had not completed 10 years of qualifying service. It is the case of the applicant that the period of suspension from 22.08.1991 to 04.02.2001 treated as dies non by the respondents for the purpose of retiral benefits was not supplied to him, therefore, the same is bad in the eyes of law and not in consonance with compromise arrived at in Labour Court and the same is done thereafter his reinstatement. The applicant prays that the period of suspension ignored by the respondents be considered as on duty and respondents be directed to include the period of suspension as qualifying service for pension and other retiral benefits.

7. Learned counsel for the respondents on the other hand while reiterating the submissions made in the reply, stated that the applicant had not completed minimum qualifying service required for pension and therefore, as per rules, the same cannot be granted to him. He further clarified that the entire period

w.e.f. 22.08.1991 to 04.02.2001 was considered as dies non for all purposes including retiral benefits vide reasoned and speaking order dated 25.09.2014. The applicant did not challenge the said order in the present OA as he is satisfied with the same but his only grievance remains pertaining to the question of grant of pension for which he is not entitled for want of minimum qualifying service as per CCS (Pension) Rules. He thus submitted that the applicant is ineligible for grant of pension. Learned counsel for the respondents further relied upon the order dated 01.10.2014 passed by the respondents and submitted that the same is self explanatory. The respondents also argued on the question of limitation and stated that the present OA is barred by limitation as no strong and cogent reasons are given by the applicant for delay to be condoned. Therefore, the present OA deserves to be dismissed on this ground alone.

8. I have considered rival contentions of both the parties.

9. It is an undisputed fact that the applicant was awarded compulsory retirement vide order dated 25.06.2002 though a compromise arrived between the parties before Hon'ble Labour Court on 15.01.2001. From the compromise, the applicant withdrew his claim before the Labour Court and also he was reinstated and it was agreed that the withdrawal of his pending dispute shall be subject to initiating disciplinary proceedings and respondents shall not have any grudge against the applicant and

shall not initiate any proceedings out of malice. As per the communication dated 08.07.2003, the applicant was informed that since applicant did not possess minimum qualifying service for pension, he is not entitled for the same.

10. It is clear that the applicant had put in 15 years 09 months and 02 days service and the period of suspension was 09 years 05 months and 14 days. The left out service, i.e. service barring suspension period, comes to 06 years 03 months and 18 days. The applicant was very well informed in the year 2003 itself that he is not eligible for pension as his total qualifying service is of 06 years 03 months and 18 days, which is less than 10 years required as minimum qualifying service for pension as per rules. It is also clear that after earlier round of litigation, the respondents have rejected representation of the applicant passed in OA No. 205/2003 wherein this Tribunal had directed the respondents to consider the case of the applicant and pass appropriate orders as per law within 03 months from the date of receipt of representation of the applicant. It was also clarified that the period of suspension from 22.08.1991 to 04.02.2001 had already been treated as dies non for the purpose including retiral benefits. Therefore, the question as to whether applicant is entitled for pension or not is very clear that since he had not put in minimum qualifying service as per rules, he is not entitled for the pension. The submission of the applicant that the period of

suspension be treated on the basis of compromise arrived at in Labour Court cannot be accepted as thereafter orders have already been passed by this Tribunal taking into account the same to consider the period of suspension as per rules and the same has been considered and appropriate order has already been passed by the respondents.

11. So far as the question pertaining to the delay in approaching this Tribunal is concerned, it is clear from records that in earlier round of litigation delay in filing the OA was condoned by the Hon'ble High Court and matter was heard on merits in OA No. 205/2003 by this Tribunal. In pursuance of order dated 29.01.2014 passed by this Tribunal in aforesaid OA, the respondents have passed order dated 01.10.2014 (Annex. A/11). After passing of order dated 01.10.2014 by the respondents, the applicant preferred present Original Application before this Tribunal on 27.09.2016. Although, applicant has filed present OA alongwith MA for condonation of delay but no justifiable explanation or reasons have been put forth by the applicant for considering condonation of delay as per Section 21 of the Administrative Tribunals Act, 1985. Applicant merely stated that he is old person and suffering from illness which has not been backed by producing any record and thus the same seems to be vague one. Although delay in agitating grievance by the applicant had been condoned by the Hon'ble High Court in

earlier round of litigation but the applicant again repeated himself and approached this Tribunal after delay of more than 02 years from date of issuance of impugned order. Keeping in view the fact that actual cause of action arose in the year 2003 itself and once delay had already been condoned, the applicant owes more explanation for condonation of the same from this Tribunal rather than vague submission put forth by him in his application for condonation of delay. Further, it is settled law that claim for pension is recurring cause of action once the right of pension is established. In the present case, the respondents denied the pension to applicant in the year 2003 itself on the ground that he does not possess required minimum qualifying service for pension, therefore, there is no recurring cause of action in the present case.

12. In view of observations made hereinabove, it is clear that the present OA deserves to be dismissed on merits and the same is dismissed accordingly. MA No. No. 290/00300/2016 filed for condonation of delay is also dismissed accordingly. There shall be no order as to costs.

[Hina P. Shah]
Judicial Member

Ss/-