

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No.290/00025/2018

Reserved on : 23.01.2019

Pronounced on : 31.01.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Prakash Chandra Bothra s/o Shri Chintamandas, aged 64 years, r/o Dhani Bazar, Barmer-344001.

...Applicant

(By Advocate: Shri T.C.Gupta)

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Post, Government of India, New Delhi – 110 001.
2. Superintendent of Post Offices, Barmer Division, Barmer-344001.

...Respondents

(By Advocate: Shri K.S.Yadav)

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- A) In view of the facts and grounds enumerated above, it is most respectfully prayed that the respondents may be directed to make the payment of the pending three bills of tuition fee with interest at the rate of 12% for the period of unexplained inordinate delay.

B) Any other appropriate writ, order or direction, which may be considered just and proper in the facts and circumstances of the case, may be issued in favour of the applicant.

2. The facts of the case are that the applicant joined the service as Postal Assistant in the year 1972 and retired on superannuation on 31.7.2012 from the post of BCR PA from Postal Department, Churu, Rajasthan. He had submitted claim of tuition fee reimbursement under order 20 of CEA (Orders), 1986 of his sons Mukesh Bothra, Lalit Bothra and Rahul Bothra for first year class of Technical College, in the year 2001, 2004 and 2007 respectively. Since the said claims were not passed by the respondents, the applicant filed OA No.11/2017 which was disposed of by this Tribunal vide order dated 19.1.2017 directing the respondents to decide the pending representation dated 24.5.2012 within a period of three months from the date of receipt of a copy of the order and thereafter communicate the decision on the representation to the applicant. In the order dated 19.1.2017 the Tribunal has also observed that it has not gone into the issue of limitation, therefore, the question of limitation remained open. After passing of the order by this Tribunal, the respondents have passed a reasoned and speaking order dated 21/23.11.2017. Being aggrieved by the action of the respondents in rejecting his representation

for tuition fee reimbursement, the applicant has preferred the present OA.

3. The respondents have filed reply on 9.8.2018 stating that the applicant had preferred claim for refund of tuition fee in respect of his son Mukesh for the year 1997-98 on 3.8.2000. During the claim period, Shri Mukesh was undergoing B.Pharm course after passing 12th class. The respondents have further stated that as per DOPT letter dated 22.3.2000 as circulated vide Postal Directorate letter dated 8.5.2000 (Ann.R/1), the Children Education Assistance under CCS (EA) Orders, 1986 is admissible upto 12th class only and accordingly no educational assistance/reimbursement of tuition fee is admissible for any diploma/course after 12th class. The applicant has preferred representation to that effect on 16.4.2002 and the same was rejected after due consideration vide letter dated 30.9.2002. Thereafter the applicant filed representation to the higher authority i.e. Postmaster General, Rajasthan Western Region, Jodhpur on 10.10.2002 which was also rejected vide letter dated 21.4.2003. Thereafter the applicant further submitted representation to the Chief Postmaster General, Rajasthan Circle, Jaipur on 17.7.2003 which was rejected vide letter dated 13.8.2008.

The applicant thereafter preferred further representation to the Member (P), Department of Post, New Delhi on 24.5.2012 and since the same was not decided by the respondents, the applicant preferred OA No.11/2017 which was disposed of by this Tribunal vide order dated 19.1.2017. In compliance of the aforesaid order, the competent authority vide letter dated 21/23.11.2017 considered representation of the applicant and passed an order which was duly communicated to the applicant. The respondents have further stated that the representation dated 24.5.2012 was in respect of one child i.e. Mukesh, but subsequently the applicant has included refund cases of other two children namely Shri Lalit Bothra and Rahul Bothra. It is also stated that tuition fee cases in respect of other two sons has already been rejected long back in the year 2010, therefore, the same is grossly time barred. It is further stated that reimbursement of tuition fee pertaining to Shri Lalit Bothra and Rahul Bothra constitute different cause of action and the same has already been rejected, thus, the cause of action which has arisen due to passing of the order dated 21/23-11-2017 cannot be clubbed with it and the OA is liable to be dismissed being joinder of different cause of action. The respondents further state

that the present OA is barred by limitation. The competent authority has already decided the claim of Shri Mukesh Bothra but as far as the reimbursement of tuition fee of Shri Lalit Bothra and Rahul Bothra is concerned, the said cases were rejected long back in the year 2010 and to challenge the said rejection is now a belated claim and hence the present OA is liable to be dismissed.

4. The applicant has filed rejoinder. The applicant has stated that the respondents have not challenged or disagreed with the provisions of Government of India order 20 of CEA Rules. As per Order 20 of Children Education Allowance (Orders), 1986, "The reimbursement of tuition fee charged by a college run by a University or affiliated to a University for Pre-University/First year class of an Intermediate College or of a Technical College or first year class of Polytechnic or for a correspondence course, shall, however, be reimbursed in full, subject to their being restricted to the rates prescribed by Government college for corresponding classes." It is further stated that 1st year class of technical college is equivalent to XII class, or not, is of no consequence. Rule 20 does not qualify the first year class of technical college as equivalent to XII class or otherwise. Rule 20 is independent Rule and is not based on

10+2+3 scheme or on class XII or higher. Rule 20 lays down claim for First year class of a technical college. Therefore, the contention of the respondents is not based on actual rule but on conjectures and surmises. The applicant further states that the clarification given vide DOPT letter dated 22.3.2000 that CEA is admissible upto 12th Class only, is of no consequence. The applicant has denied the contention of the respondents stating that the representation dated 25.4.2012 which was rejected by the respondents vide their order dated 23.11.2017 is pertaining to one tuition fee bill, therefore, claim made for three bills for three sons is not as per directions of the Tribunal. The applicant states that this Tribunal in the order dated 19.1.2017 has discussed the issue of three bills but the respondents have failed to take any action therefore, he has prayed that the OA may be allowed.

5. Heard Shri T.C.Gupta, learned counsel for the applicant and Shri K.S.Yadav, learned counsel for the respondents and perused the material available on record.

6. During the course of arguments, the learned counsel for the applicant submits that he is only relying on the pleadings made in the OA as well as rejoinder and does not

want to add anything further and the OA may be decided accordingly.

7. The respondents stated that the impugned order dated 21/23.11.2017 passed in compliance of the directions of the Tribunal in OA No.11/2017 is a reasoned and speaking order. The main stand of the respondents is that if the Order 20 of the Children Education Allowance is read with subsequent clarification issued by DOPT vide letter dated 22.3.2000, no tuition fee is admissible for any diploma/course after 12th class. They have clarified that the representation dated 24.5.2012 preferred by the applicant has been considered extensively by the competent authority and it was found that the applicant was not entitled for tuition fee for first year B.Pharm. The respondents have reiterated their stand taken earlier and further clarified that as per DOPT OM dated 22.3.2000 children education assistance under CCS (EA) Orders is admissible upto 12th class only. The Chief Postmaster General has already informed the applicant vide letter dated 13.08.2008 that reimbursement of tuition fee for 12th Class has already been made to the applicant, and he is not entitled to tuition fee reimbursement thereafter as per rules. The applicant had submitted claim of refund of tuition fee in respect of Shri

Mukesh Bothra for the first year of B.Pharm but since Shri Mukesh Bothra was admitted in the course after passing 12th class, therefore, as per DOPT letter dated 22.3.2000, the claim of the applicant could not be entertained. It is also contended that the tuition fee of Shri Lalit Bothra and Rahul Bothra has been claimed for the first year of technical college whereas they were admitted to the technical college after passing of 12th class, therefore, as per clarification dated 22.3.2000 issued by the DOPT refund of tuition fee is reimbursable upto 12th class and accordingly, claim in respect of the applicant's two other sons, namely Shri Lalit Bothra and Rahul Bothra were rejected. Hence, the respondents submit that the action of the respondents is just and proper.

8. Considered the rival contentions of both the parties.

9. Admittedly, the applicant is claiming tuition fee reimbursement of his sons pertaining to the year 2001, 2004 and 2007. It appears that for the first time he has challenged rejection of reimbursement by filing OA No.11/2017, which was disposed of with direction to decide the pending representation, but the question of limitation was kept open. If the matter is considered on the point of

limitation, the applicant has not stated the reasons as to why he has not approached the Tribunal for claiming the relief within the period of limitation. Although, he has made so many representations, but it is settled law that repeated representation does not extend the period of limitation. In this regard, it will be relevant to refer to some of the judgment of the Hon'ble Supreme Court. [In C. Jacob v. Director of Geology and Mining and another](#), (2008) 10 SCC 115, a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed that:

“When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience of court order. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of “acknowledgement of a jural relationship” to give rise to a fresh cause of action.”

[In Union of India and others v. M.K. Sarkar](#), (2010) 2 SCC 59, the Hon'ble Apex Court, after referring to C. Jacob (supra) has ruled that 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 cannot 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 courts direction. Neither a courts 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.

If the matter is viewed in the light of the above ratio decided by the Hon'ble Apex Court, the claim of the applicant is hopelessly time barred and liable to be dismissed on the ground of limitation alone, but in the interest of justice, the matter is also being considered on merit.

10. Sub-clause (d) under Definition clause of the CCS (Educational Allowance) Orders, 1988 provides that Higher Secondary or Senior Secondary Classes means classes XI and XII and include classes up to the equivalent of XII Class under the 10+2+3 scheme like pre University Class or the first year of an Intermediate College, a Technical College, or

a Polytechnic provided the child has passed the Secondary or equivalent, but not the Higher Secondary Examination before joining such class. The respondents state that pursuant to DOPT letter dated 22.3.2000 and Department of Post letter dated 8.5.2000, a clarification dated 26.7.2001 was issued vide letter dated 26.7.2001 (Ann.R/1), clarifying that no educational assistance/reimbursement after 12th class is admissible. In the present case, the applicant is claiming reimbursement of tuition fee of his three sons for the courses after passing the 12th class examination. On the basis of the Order 20 of CCS (EA) Orders read with DOPT clarification dated 22.3.2000, the respondents have rejected the claim of the applicant time and again and finally in compliance of the order of this Tribunal decided his representation vide order dated 21/23.11.2017, which cannot be faulted.

It is noted that though the respondents have passed a reasoned and speaking order dated 21/23.11.2017 as per the directions of the Tribunal in earlier round of litigation, the applicant surprisingly has not sought quashing and setting aside the said order. In the earlier OA also, the applicant had prayed for payment of tuition fee bills with interest. As the respondents have already decided the said

issue, the applicant is again unnecessarily making frivolous claim for reimbursement of bills.

11. After considering the matter in the above facts and circumstances, I am of the view that the said order is quite reasoned one and requires no interference by this Tribunal.

12. In view of above discussions, the OA is dismissed on merit as well as on limitation with no order as to costs.

(HINA P.SHAH)
JUDL. MEMBER

R/