

Central Administrative Tribunal, Principal Bench

Original Application No.1010 of 2003
M.A.1127/2003

New Delhi, this the 12th day of February, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)

Dr. Jai Narain Kaushik
S/o Shri Ram Swaroop
R/o C-605, Saraswati Vihar,
(retd. as Vice Principal)
in Govt. Boys Secondary School
Pratap Nagar, Delhi

....Applicant

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Lt. Governor,
Govt. of NCT of Delhi
Raj Niwas Marg,
Delhi
2. Chief Secretary,
Govt. of NCT of Delhi
5, Sham Nath Marg,
Delhi
3. Secretary (Education)
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.
4. Director of Education,
Govt. of NCT of Delhi
5, Sham Nath Marg,
Delhi
5. Dy. Director of Education
(District North)
Directorate of Education
Govt. of NCT of Delhi,
Lucknow Road, Delhi

....Respondents

(By Advocate: Shri George Paracken)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant, on an earlier occasion, had filed
O.A.2492/97. It was dismissed on 23.2.98.

2. In the sequence of events that is to follow, we
make it clear that the facts are not in controversy. The

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applicant is a teacher of outstanding ability. He was firstly awarded the Municipal Corporation Award of merit which was followed by the State Award of merit and finally on 5.9.96, he was awarded National Award of merit of a teacher of outstanding calibre.

3. Different instructions have been issued from time to time acting under sub-rule 3 to rule 110 of Delhi School Education Rules, 1973. In case of a person who holds the award of the Municipal Corporation earlier, the extension of one year's service could be granted. It could be two years in the case of the State Awards and three years in the case of a National Award.

4. The applicant admittedly had been granted the extension of two years in pursuance of the State Award referred to above.

5. The controversy arose in the abovesaid O.A. filed by the applicant which was dismissed. The applicant challenged the said order of this Tribunal by filing Civil Writ Petition No.3361/2001 and on 7.11.2001, the Delhi High Court had passed the following order:

"After arguing for a while, L/C for petitioner prayed for withdrawal of this petition with liberty to challenge validity of official respondent's circular dated 12.3.1996. Petition is dismissed as withdrawn with liberty prayed for granted subject to just exceptions which may be available to respondents. However, any plea of limitation shall not come in the way of deciding the matter on merits, if any, brought before Tribunal."

6. In pursuance thereto, the fresh application under

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consideration has been filed by the applicant.

7. On behalf of respondents, it has been urged that the Delhi High Court has not set aside the order passed by this Tribunal. Only liberty was granted to the applicant to withdraw the earlier petition subject to just exceptions which may be available to respondents. Taking advantage of the same, it is contended that in the earlier O.A., this plea has been raised and the petition had been dismissed and therefore, the subsequent petition is not maintainable. As per the learned counsel for the applicant who fairly concedes the facts but contends that once liberty has been granted to file a fresh petition, this Tribunal should go into the validity of the circular dated 12.3.96.

8. We have already reproduced above the order passed by the Delhi High Court. The petition was dismissed as withdrawn with liberty granted subject to just exceptions which may be available to respondents. In other words, the respondents are not debarred from bringing to the notice of this Tribunal that in the subsequent petition, the applicant cannot be permitted to raise this plea.

9. In the earlier O.A., this Tribunal recorded:

"The applicant is aggrieved by the order passed by Respondent 5 dated 9.9.1997 by which he has been asked to retire from service w.e.f. 3.11.1997 after completion of extension of period of his second term as Vice Principal in Govt. Boys Senior Secondary School, Pratap Nagar, Delhi. The applicant has impugned the validity of this order on the ground that it has been passed without application of mind and without taking into consideration the fact that in the meantime on 5.9.1996 he had been given a National Award for teachers. The applicant has also challenged the

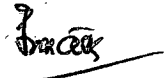
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validity of the circular dated 12.3.1996 issued by the respondents wherein it is stated that those teachers who have received the National Award after 1990 will not be granted any extension in service."

10. It is abundantly clear from the aforesaid that the question about validity of the circular of 12.3.96 was alive before this Tribunal. The petition was dismissed. The principle in law is well settled that a relief prayed and not granted is deemed to have been refused. It is on the strength of the same that the learned counsel for the respondents rightly points out that this Tribunal cannot go into this controversy because a Co-ordinate Bench has already dismissed the petition. Learned counsel for the applicant replies that there is no such finding specifically recorded.

11. We have already referred to above that the Delhi High Court had reserved the rights of the respondents to take all legal pleas available to them. They are within their rights to do so.

12. Once the plea has been raised in the earlier petition and the same has been dismissed, we find that it will not be permissible for us to go into the validity of the same. Resultantly, the O.A. being without merit must fail and is dismissed.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman