

(2) (15)

Central Administrative Tribunal, Principal Bench

O.A. No. 3082/2003

New Delhi this the 11th day of April, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

R.S. Mishra
PGT (Chemistry)
KV Sainik Vihar,
New Delhi.

....Applicant

By Advocate: Shri M.K. Bhardwaj.

Versus

Union of India through

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, SJS Marg,
New Delhi-110 016.
2. Joint Commissioner (Admn)
Kendriya Vidyalaya Sangathan,
18, Institutional Area, SJS Marg,
New Delhi-110 016.

...Respondents

By Advocate: Shri H. Jairaman, proxy counsel for Shri S. Rajappa, Counsel.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant is seeking direction to the respondents to issue him offer of appointment as Principal in Kendriya Vidyalaya Sangathan (KVS) with effect from February, 1987 and all other consequential benefit.

2. The allegations of the applicant briefly stated are that he was working as PGT (Chemistry) in KVS since July, 1976. In response to an advertisement issued in May-June, 1986, he applied for the post of Principal in KVS against direct recruitment quota. He attended the interview and was recommended for appointment to the post of Principal by the Selection Committee in February, 1987. However, he was not appointed to the post in view of the disciplinary proceeding pending against him. His service was terminated by the respondents in the said proceeding. He challenged this order and Hon'ble High Court quashed it as a result he was reinstated in service with effect from 29.10.1994 with all consequential benefits. Thereafter, he made representation to the

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respondents non-the-less has not been appointed to the post of Principal. He submitted that by letter dated 5.2.1988 he was intimated by the respondents about his selection for appointment to the post of Principal. Hence the OA.

3. In the counter-reply the respondents have denied that the applicant was selected and his name was recommended by the Selection Committee for appointment to the post of Principal against direct recruitment quota. It was submitted that the Selection Committee had recommended the name of 41 candidates for appointment to the post of Principal in the main list and 9 candidates were kept in reserved panel. The applicant's name did not figure in any of these two lists. The respondents have also submitted that the present OA is also barred by time and should be dismissed. The copy of the minutes of the Selection Committee were filed as Annexure R-1 to the reply.

4. In the rejoinder, the applicant controverted the allegation of the respondent that he was not selected and he has filed copies of the letter dated 5.2.88 and 27.2.89 sent by the office of the respondents stating that though he had been selected for appointment to the post of Principal but he would not be issued appointment letter unless he was reinstated in service.

5. We have heard the learned counsel for the applicant and have also carefully perused the written arguments submitted by both the parties.

6. First question that arise for decision is whether the present application is filed within the limitation prescribed by Section 21 of the Administrative Tribunals Act, 1985 (the Act). As per the averment made in the OA, the applicant was selected for appointment to the post of Principal by the Selection Committee in February, 1987. He also relies upon two letters received by him from the office of the respondents first dated 5.2.1988 and the second dated 27.2.1989 which give an impression that the applicant has been selected but he had to wait for appointment till the disciplinary proceedings were over. It is also alleged in the OA that right from 1987 he had been making representations to the respondents for supplying him the copies of the papers relating to his appointment. It is also his case that in disciplinary proceedings his service was terminated by the respondents and the Hon'ble High Court set aside the order and as a consequence he was reinstated in service in 1994. Thereafter he again sent representation to the respondents but to no effect.

reinstated in service

7. The documents which have been filed by the applicant with the OA included a letter written by the applicant to the Principal of KVS Rajkot on 18.1.1997 (page 27) wherein he stated that he had come to know that he had been selected and appointed as Principal against direct recruitment quota and the school had also received personal as well as the office copy of the appointment letter. He requested the Principal to deliver the appointment letter. Another letter sent by the applicant to the Assistant Commissioner KVS is dated 13.3.1987 in which he wrote that he had been informed by the office of the Principal KVS, Rajkot that personal office copy of offer of his appointment as Principal had been received but the Principal had instructed the office not to deliver the copy to him. He requested the authority to give necessary instructions to the Principal to supply copy of the same so that he could join the new post. The respondent had also made a representation to the Education Minister on 27.6.1987 (page 29) wherein also he complained that the offer of appointment had not been delivered to him by the Principal and that Principal be directed to do the needful in the matter immediately. Another letter was sent by the applicant to the Assistant Commissioner, KVS (page 38) where again he stated that Principal was not delivering the offer of appointment to him and he should be directed to hand over the copy so that he could join the new post immediately. Another letter was send by the respondents to the Commissioner, KVS on 22.10.1987 (page 31). The complaint was made to the Commissioner that the Principal was not hading over the offer of appointment as Principal to him and was not relieving him for joining the new assignment. He sought his intervention in the matter. The applicant sent a letter addressed to the Senior Administrative Officer, KVS on 8.1.1998 (page 32) by which a request was made that a duplicate copy of the offer of appointment be issued to him and the Principal be directed to relieve him for joining the new assignment.

8. Besides the applicant has filed a series of the representations made by him in the year 2002-03, copies of which are at pages 18,20,22, 23, 34 to 40.

9. In the rejoinder the applicant has annexed copies of representations dated 20.8.2004 and 27.11.2004 as Annexure A-2 and A-3 as such the last representation was 22.11.2004.

10. Besides the applicant also filed copies of the letters dated 5.2.88 send by the Assistant Commissioner, KVS to the applicant whereby the applicant was informed that

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though he had been selected as Principal, KVS through direct recruitment by interview held in September, 1986 but he could not be permitted to join new assignment because of the pending disciplinary proceedings. It was also alleged that for his satisfaction, the copy of the letter of the selection would be handed over to him in a few days' time. But he was asked to desist from making representation to the higher authorities failing which disciplinary action would be taken. The copy of another letter dated 27.2.1989 which was addressed by the Education Officer to the applicant in which it was again stated that since he had been terminated from service in a disciplinary proceedings he would be allowed to join the new post as Principal after his reinstatement in service and he was told then that no further request in the matter would be entertained.

11. OA under Section 19 of the Act may be filed within the time prescribed by Section 21 of the Act. Sub-Section (1) of Section 21 which is relevant, is reproduced as under:

“ 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 a 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.

12. It will also be pertinent to reproduce the Section 20 (2) of the Act which has been referred to in Sub-section (1) of Section 21

“(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to the redressal of grievances, -

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances -

(a)if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by

As sent over when

such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-section (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial".

13. In S.S. Rathore Vs. State of Madhya Pradesh, (1989) 11 ATC 913, the Hon'ble Supreme Court elucidating Section 20 and 21 of the Act, made the following observation:-

"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' 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 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 Section 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".

14. Hon'ble Supreme Court again considered the provision of Section 21 of the Act in State of Karnataka & Ors. Vs. S.M. Kotrayya and others, 1996 SCC(L&S) 1488. It was observed:

"7. A reading of the said Section would indicate that sub-section (1) of Section 21 provides for limitation for redressal of the grievances in clauses (a)&(b) and specifies the period of one year. Sub-section (2) amplifies the limitation for one year in respect of grievances covered under clause (a)&(b) and an outer limit of six months in respect of grievances covered by sub-section (2) is provided. Sub-section (3) postulates that notwithstanding anything contained in sub-section (1) or sub-section (2), the applicants satisfy the Tribunal that they have sufficient cause for not making the applications within such period enumerated in sub-sections (1) and (2) from the date of application, the Tribunal has been given power to condone the delay, on satisfying itself that the applicants have satisfactorily explained the delay in filing the applications for redressal of their grievances. When sub-section (2) has

Answer and Rebuttal

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given power (sic right) for making applications within one year of the grievances covered under clause (a) and (b) of sub-section (1) and within the outer limit of six months in respect of the grievances covered under sub-section (2), there is no need for the applicant to give any explanation to the delay having occurred during the period. They are entitled, as a matter of right, to invoke the jurisdiction of the court for redressal of their grievances. If the applications come to be filed beyond that period, then the need to give satisfactory explanation for the delay caused till date of filing of the application must be given and then the question of satisfaction of the Tribunal in that behalf would arise. Sub-section (3) starts with a non obstante clause which rubs out the effect of sub-section (2) of Section 21 and the need thereby arises to give satisfactory explanation for the delay which occasioned after the expiry of the period prescribed in sub-sections (1) and (2) thereof.

9.....We hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered that they came to know of the relief granted by the Tribunal in August, 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under Sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay".

15. The limitation provided in sub-section (1) of Section 21 of the Act shall start, as laid down in the cited judgment from:

- (i) The date on which final order;
- (ii) where a statutory remedy is provided, from the date on which the appeal or representation as provided in law is decided and;
- (iii) where statutory remedy of appeal and representation is availed of but the appeal or representation is not decided then six months from the date of preferring appeal or making of representation for computing period of one year prescribed in clause (a) and one and a half year prescribed in clause (b) of sub-section (1) of Section 21, it is necessary that the remedy availed of by filing representation must be a statutory remedy.
- (iv) Repeated unsuccessful representation and memorandum by the applicant, in accordance with law enunciated in the above cited judgment, would not extend the limitation prescribed under sub-section (1) of Section 21 of the A.T. Act.

16. In the backdrop of the above principle of law now we advert to the facts of the present case again. The applicant came to know that he had been selected as Principal but offer of appointment has been withheld by the respondents between 1987 and 1989. In case was led to believe that he would be issued offer of appointment after he was reinstated in service, order of his dismissal from service was set aside and he was

Answered and

reinstated in service in September, 1994. Thereafter, there was no hinderance in his joining the new posting. But he still slept over his right and filed the present OA only on 16.12.2003, i.e., full 9 years after his reinstatement in service. Moreover, he was selected as a direct recruit. There was no need for him to have waited for 15 years before filing the OA. As held in S.S. Rathore (Supra) repeated unsuccessful representation will not extend the limitation. As such from whatever angle the case of the applicant, as pleaded, is considered it is hopelessly barred by time.

17. Furthermore, the applicant has not filed application for condonation of delay. No explanation worthwhile is forthcoming for such inordinate delay.

18. The Hon'ble Supreme Court in Hukam Raj Khinvsara Vs. U.O.I. & Others, AIR 1997 SC 2100 held as under :-

“9. Learned counsel for the appellant contends that the Tribunal would have condoned the delay in filing the application. It is not his case that he made an application for condonation of delay and the Tribunal had rejected the application without examining the grounds for the delay occasioned by him. Under these circumstances, we need not go into further question of refusal to condone the delay by the Tribunal.

10. The appeal is accordingly dismissed. No costs”.

19. In Ramesh Chand Sharma and Others Vs. Udhamp Singh Kamal and Others, 1999 (5) SLR 655 the Hon'ble Supreme Court again held:-

“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 OA 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 (-sic-) settled, see Secretary to Government of India and Others Vs. Shivram Mahadu Gaikwad, 1995 Supp. (3) SCC 231: [1995 (6) SLR 812 (SC)]”.

20. As laid down in the above cited cases, it was imperative on the applicant to have filed an application for condonation of delay which has not been filed although a preliminary objection was raised by the respondents in the counter-reply.

21. In the absence of application for condonation of delay, and in the absence of any cogent reason which prevented the applicant from filing the present OA in time to the satisfaction of the Tribunal pleaded in the OA and the rejoinder the Tribunal does not find any justification in condoning the delay in filing this OA.

M. A. Khan

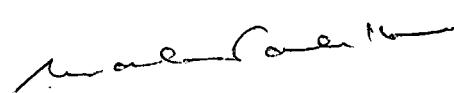
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22. The applicant along with his written submission had filed a copy of the judgment of the Hon'ble Supreme Court in Chief General Manager, Telecom Vs. G. Mohan Prasad and Others, 2000 (1) SLR 168 where the OA was filed with 195 days delay. The Hon'ble Supreme Court observed "that the condonation of delay is a discretion of the court depending upon the circumstances of each case. If a Governments servant has been conferred certain pecuniary benefits which he is not otherwise entitled to under the rules, non-interference with such an order is a burden on the exchequer. Accordingly the delay was condoned and the Hon'ble Court, while issuing notice indicated that the matter would be disposed of at the admission stage itself. The facts of the case in hand were distinguishable so the judgment cited does not come to the rescue of the applicant.

23. As a consequence we are constrained to hold that the present OA is barred by time prescribed under sub-section (i) of Section 21 of the Act.

24. In view of the above finding we should have refrained from deciding other question raised in the OA on merit. But even on merit the applicant's OA is liable to be dismissed.

25. The respondents have the minutes of the Selection Committee along with their reply. The name of the applicant is neither in the list of 41 candidates who were recommended for appointment as Principal nor was it in the list of 19 candidates who were in the waiting list. The applicant has alleged that this document is a fabricated document in view of the communication which he had been received from some subordinate officers of KVS that he had been selected in interview. We have seen the minutes and find that the Chairman and Members of the Selection Committee all were independent and responsible persons who had no axe to grind with the applicant. They have put their signature authenticating the list. We have no reason to doubt the genuineness of the list. On the contrary, the letters which the applicant is relying upon have been issued by the lower functionaries. The list of the selected candidates has not been produced. Offer of appointment, which, according to him, was issued but not delivered to him has also not been filed. Therefore, we cannot rely upon the documents which have been filed by the applicant along with his rejoinder as rebuttal to the minutes of the Selection Committee. Accordingly, we do not find any material on record or



reason to hold that the applicant was selected for appointment as Principal in the School of the respondent Sangathan.

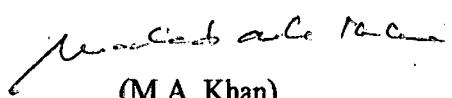
26. Moreover, mere selection of the applicant as Principal and inclusion of his name in the selection list would by itself not give any indefeasible legal right to the applicant to the appointment as Principal also.

27. For the reasons stated above, we do not find any merit in the OA. It is accordingly dismissed but without any order as to costs.



(S.A. Singh)

Member (A)



(M.A. Khan)

Vice Chairman(J)