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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**R.A. NO.180/2008
M.A. NO.1952/2008
in
O.A. NO.2657/2003**

This the 27th day of April, 2009

**HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN
HON'BLE SHRI L. K. JOSHI, VICE-CHAIRMAN (A)**

Hari Ram Aggarwal S/O M. C. Aggarwal,
R/O B-25, Old Gobind Pura,
Delhi-110051.

... Applicant

(By Shri K. K. Sharma, Advocate)

Versus

1. Chief Secretary,
Government of NCT of Delhi,
Delhi Secretariat, I.P.Estate,
New Delhi.

2. Secretary (Education),
Government of NCT of Delhi,
Old Secretariat,
Delhi-110054.

3. Director of Education,
Government of NCT of Delhi,
Old Secretariat,
Delhi-110054.

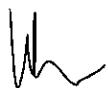
... Respondents

(By Shri Ajesh Luthra, Advocate)

O R D E R

Justice V. K. Bali, Chairman:

Hari Ram Aggarwal, who joined the Department of Education on the post of TGT in the year 1967, is clamouring for grant of second financial upgradation under Assured Career Progression



Scheme (ACPS), primarily on the ground that as he had put in 32 years of service as on 9.8.1999, he would be entitled to ACPS benefit as admissible under rules and instructions issued by the respondents. It is further the case of the applicant that the ACPS is a safety net for progression of an employee who may not have earned any promotion. For a period of 32 years, it is his case, he was not promoted to higher post. Reliance for the relief asked for is primarily on instructions dated 3.5.2000 and 19.5.2000, as also circular dated 17.4.1999. Prior to filing of OA No.2657/2003, it is the case of the applicant, the Education Officer vide letter dated 6.5.2002 called the applicant to see him for redressal of his grievances. The said officer on 23.5.2002 informed the applicant that his case had been sent to the Government of India for seeking some clarification. When, however, no relief was granted to the applicant, he first made representations and then filed the OA aforesaid in this Tribunal. During pendency of the OA, the applicant filed a misc. application bearing MA No.61/2004, which reads as follows:

“1. That it is respectfully submitted that the authorities have given assurance to consider the case of applicant at department level for grant of reliefs claimed in O.A.

2. That applicant therefore, wants to withdraw the OA in view of above with the liberty to file afresh if cause survives.

PRAYER

It is, therefore, respectfully prayed that the Hon'ble Tribunal may most graciously be pleased to

allow the OA to be withdrawn with liberty to file afresh, in the ends of justice (emphasis supplied)."

OA No.2657/2003, it appears from the order passed by the Tribunal on 12.1.2004, was listed before the Deputy Registrar, when MA No.61/2004 came to be listed before the Tribunal. The following order came to be passed on 12.1.2004:

"Notice of the O.A. had been issued. It was to be listed before the Deputy Registrar for completion of pleadings. The applicant has filed M.A. No.61/2004 seeking to withdraw the present petition.

2. M.A. is allowed and the O.A. is dismissed as withdrawn."

When the department, however, did not redress the grievance of the applicant, the applicant filed another OA No.2626/2006, in which, the respondents have raised an objection that the same would not be competent being barred by provisions of Order XXIII Rule 1(4)(b) of the Code of Civil Procedure, as OA No.2657/2003 was withdrawn, and while passing the order of dismissal even though as withdrawn, no permission was given by the Tribunal. Confronted with the position aforesaid, the applicant has filed a misc. application bearing MA No.789/2008 in OA No.2657/2003, wherein after giving the facts of the case, it is prayed that this Tribunal may consider the averments made in MA No.61/2004 necessitating withdrawal of OA No.2657/2003, as also the order passed by the Tribunal dated 12.1.2004 allowing the same, in the context of its prayer clause and thus adjudicate OA No.2626/2006 pending before the Tribunal. The applicant has also filed review

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application bearing RA No.180/2008 seeking review of order dated 12.1.2004 passed by the Tribunal in OA No.2657/2003. Inasmuch as, the review application has been filed beyond the prescribed period of limitation, the same is accompanied by an application bearing MA No.1952/2998 seeking condonation of delay. The averments made in the review application are the same as made in the misc. application and in support of the review application, it is averred and so argued by the learned counsel representing the applicant that the Tribunal erred even though, by inadvertence, not to mention the words 'with liberty' in its order dated 12.1.2004, and this would be an error apparent on the face of records.

2. The respondents have put in appearance both in the misc. application seeking condonation of delay and review application. Reply, however, has been filed only in the application seeking review of order dated 12.1.2004. Insofar as, the facts are concerned, there is no dispute even though, the respondents have prayed that the misc. application and review application be dismissed.

3. Insofar as, application seeking condonation of delay is concerned, it is pleaded therein that the applicant had withdrawn his earlier OA No.2657/2003 on being given assurance by the authorities to consider his case for grant of ACP benefits at department level itself. The prayer made in the application is thus, to condone the delay in filing the review application seeking review of order dated 12.1.2004 inasmuch as, the words 'with liberty' be

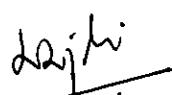


read into the order, giving liberty to the applicant to file fresh OA. Counsel representing the applicant contends that delay has been caused in filing this review application only because the applicant, on advise, was given to understand that once the application seeking withdrawal of his earlier OA was with liberty to file a fresh OA, it would be competent for him to file a fresh OA, and the review was not sought earlier, and it is only when the respondents are persisting with regard to maintainability of the second OA No.2626/2006, that the applicant had to resort to filing of review application.

4. We have heard the learned counsel representing the parties and with their assistance examined the records of the case. We may mention at the very outset that it is too well settled a proposition of law that if a litigant has suffered or met with adverse consequences because of fault of the court, it is the bounden duty of the court to correct its mistake and reverse the adverse consequences suffered by the litigant, exclusively because of the fault of the court. With this principle of law in mind, we have no hesitation whatsoever in recording that once, the applicant had sought permission to withdraw the OA with liberty to file a fresh one with the same cause of action, the court had no choice but for to either reject the application and hear the *lis* on its merit, or else, while dismissing the OA as withdrawn, to accord liberty to the applicant to file a fresh Application on the same cause of action. Present is thus, proved to be a case of inadvertent mistake made by

the court and, therefore, order dated 12.1.2004 has to be directed to read as "M.A. is allowed and the O.A. is dismissed as withdrawn with liberty." Even though the prayer of the applicant in MA No.789/2008 in OA No.2657/2003 is for adjudication of OA No.2626/2006 in consideration of the averments made in MA No.61/2004 necessitating withdrawal of OA No.2657/2003, as also the order passed by the Tribunal allowing the same, we would rather choose to correct the order, for which no limitation may be required. The court can mould the relief as per facts and circumstances of each case, and it is not necessary to accord the same relief that might have been asked for by the applicant. MA No.1952/2008 is thus allowed by correcting the order dated 12.1.2004. In view of the order passed in the MA, the review application becomes infructuous.

5. Both MA No.789/2008 in OA No.2657/2003 and RA No.180/2008 are decided in the manner indicated above. The consequence of this order would be that OA No.2657/2003 is revived.



(L. K. Joshi)
Vice-Chairman (A)



(V. K. Bali)
Chairman

/as/

