

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 6376 of 2015 (O&M)
Date of decision: 06.04.2015**

Balwinder Kaur

....Petitioner

Versus

Union of India and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Mr. J.R.Syal, Advocate
for the petitioner.

P.B. Bajanthri, J.

The petitioner has questioned the order of the Central Administrative Tribunal (for short 'CAT'), Chandigarh dated 06.01.2015 passed in O.A.No.0600/00012/2014, order dated 11.04.2002 by which Director Public Instruction imposed the penalty of dismissal of service and order dated 29.01.2003 of the Secretary Education, Chandigarh Administration by which the petitioner's appeal was rejected.

(2) The petitioner was working as Clerk in Government High School, Behlana and Government Middle School, Raipur Khurd, UT, Chandigarh. She alleged to have committed embezzlement of Government money to the tune of Rs.3,87,575/- besides a irregular contingent

expenditure to the extent of Rs.39,383/-. On the aforesaid allegations, both the criminal and disciplinary proceedings were launched against petitioner.

(3) On 28.12.1999 disciplinary proceedings were initiated under Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules, 1970. The said memorandum was superseded by memorandum dated 09.10.2000 vide Annexure P-2 by which the following charge were framed:-

“That Smt. Balwinder Kaur while functioning as Clerk in Govt. High School, Behlana and Govt. Middle School, Raipur Khurd, U.T., Chandigarh has misconducted herself by committing embezzlement of Govt. money amounting to Rs.3,87,575/- besides irregular contingent expenditure to the tune of Rs.39,383/- in connivance with the then Headmistress, Smt. Satya Goel who has since retired.

By doing so, the said Smt. Balwinder Kaur, has acted in a manner unbecoming of a Government Servant thereby violating the provisions of Rule 3 of the Punjab Government Employees (Conduct) Rules, 1966 as made applicable to the employees of Union Territory, Chandigarh.”

(4) After receipt of the charge memo by the petitioner, she denied the alleged charge and requested the concerned authority to drop the proceedings. At the same time, she had requested for furnishing certain documents for her perusal.

(5) Criminal proceedings were launched against the petitioner and one Smt. Satya Goel, Headmistress/DDO retired for the offences under Sections 409, 420, 467, 468 and 471 of IPC.

(6) In the disciplinary proceedings the enquiring authority held that charges were proved against the petitioner. The same was taken note of by the disciplinary authority who completed due procedure by furnishing copy of the enquiring officer report and seeking explanation. Consequently, after due examination of the records, the disciplinary authority imposed the penalty of dismissal from service on the petitioner on 11.04.2002. Aggrieved by the order of dismissal, petitioner preferred appeal before the appellate authority. On 29.01.2003, the appellate authority rejected the petitioner's appeal.

(7) The petitioner did not avail the further remedy against the order of penalty of dismissal and so also rejection of her appeal by the appellate authority. In other words, she has virtually accepted the order of dismissal.

(8) In the criminal proceeding, the petitioner was acquitted with the charge on 28.02.2012. In pursuance of the acquittal order, the petitioner opened her eyes in respect of her service condition namely requesting the concerned authority to reinstate her into service. Since there was no response from the concerned authority, she filed an appeal before the Administrator-respondent No. 2 on 30.04.2013, thereafter, in the year 2014, the petitioner approached the CAT, Chandigarh questioning the validity of the dismissal order dated 11.04.2002 and so also rejection of appeal dated 29.01.2003. On 06.01.2015, the CAT, Chandigarh has dismissed the OA No.060/00012/2014 mainly on the ground of delay in approaching the Tribunal. Now, the petitioner is aggrieved by the order of CAT, Chandigarh read with dismissal order dated 11.04.2002 and rejection of appeal dated 29.01.2003. Thus, the petitioner is before this Court.

(9) Learned counsel for the petitioner vehemently submitted that the petitioner was subjected to disciplinary as well as criminal proceedings arising out of the same misdeeds. The disciplinary proceedings concluded in imposing the penalty of dismissal from service on 11.04.2002 and consequently, appeal was rejected on 29.01.2003, whereas in criminal proceedings, the petitioner was acquitted of the charge on 28.02.2012. Consequently, the petitioner is entitled for reinstatement into service with all consequential benefits. Learned counsel for the petitioner has relied upon the decision of ***Deputy Director of Collegiate Education (Administration) (Madras) versus S.Nagoor Meera, 1995 SCC(3)377***. The said judgment is not at all relevant to the present case. That decision is with reference to Article 311 (2) (a) i.e. in connection with the conduct which has led to his conviction on a criminal charge etc.

(10) Learned counsel for the petitioner further submitted that in view of the judicial pronouncement, the disciplinary proceedings and imposition of penalty are vitiated. It was further argued that in view of the acquittal in the criminal proceedings the order passed in the disciplinary proceedings is required to be reviewed. Learned counsel for the petitioner has failed to point out under which provision of law the disciplinary proceedings can be reviewed in view of the acquittal in the criminal cases. No doubt, it is contended that charges in both the disciplinary and criminal proceedings are one and the same however, no comparative material has been produced to demonstrate that they are one and the same. He had also relied on the decision of the Apex Court namely ***Managing Director, State of Hyderabad Versus P.Kata Rao, 2008 AIR(SC)2146***. In the absence of necessary

comparative material in both the proceedings, the same cannot be considered.

(11) At the outset, there is a delay and laches on the part of the petitioner in questioning the order of dismissal dated 11.04.2002 as well as rejection of her appeal dated 29.01.2003. On this count alone, the writ petition too is liable to be rejected.

(12) The conduct of the petitioner is to be taken note of viz., petitioner after rejection of her appeal against dismissal order, she did not agitate her right before the appropriate forum questioning the validity of dismissal order dated 11.04.2002 and rejection of appeal dated 29.01.2003. She has approached CAT, Chandigarh for the first time in the year 2014 i.e., after more than a decade. At this stage, it is relevant to submit that in the Original Application before the CAT, Chandigarh in para no.3 she has stated as follows:-

“Limitation:-

The applicant further declares that the Original Application is well within the period prescribed in Section 21 of the Administrative Tribunals Act, 1985.”

(13) When the petitioner questioned the order dated 11.04.2002 read with order dated 29.01.2003, the petitioner contended that the original application filed before the CAT, Chandigarh is within the period prescribed in Section 21 of the Administrative Tribunal Act, 1985. On this count, her original application before the CAT, Chandigarh was not maintainable. In this regard, it is necessary to quote a decision of the Apex Court which is reported in ***AIR 1999 SC3837 (Ramesh Chander Sharma Versus Udham***

Singh Kamal and others). The Apex Court interpreted Section 21 of the Administrative Tribunals Act, 1985 and has held that :-

“4. The respondent No. 1 Udham Singh Kamal on 2nd June, 1994 filed Original Application (O.A.) before the Himachal Pradesh Administrative Tribunal. This O.A. was admittedly beyond the prescribed period of limitation of three years as provided under Section 21 of the Administrative Tribunals Act, 1985. As regards the limitation in paragraph 5, the first respondent has stated as under :

"The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985."

This averment clearly indicates that the first respondent was all along asserting that he had filed O.A. within limitation but it was not so. The appellants in both these appeals have raised a contention that the O.A. was beyond three years and, therefore, the same was barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Despite this objection raised by the appellants, the first respondent did not file any application for condonation of delay. Section 21 (3) of the Act gives power to the Tribunal to condone the delay if sufficient cause is shown.

5. Section 21 reads as under :

"21. 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 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.

(2) xxxxxxxxxxxxxxxxx

(3) *Notwithstanding anything contained in sub-section (1) or subsection (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal, that he had sufficient cause for not making the application within such period."*

Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the O.A. filed by the first respondent Udham Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under sub-Section (3) of Section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of O.A. on merits. It was, therefore, contended that the Tribunal has totally overlooked the statutory provision contained in Section 21 of the Act and, therefore, impugned order be set aside.

6. *Learned Counsel for the first respondent urged that after his representation was rejected by the Himachal Pradesh Government on 2nd July, 1991. he had made another representation pointing out the factual position and, therefore, the period of limitation needs to be counted not from 2nd July, 1991 but from the date of rejection of his second representation (no date mentioned). He also urged that the vacancy arose because one Shri Sita Ram Dholeta who was holding the post and working as Translator-cum-Legal Assistant went on deputation in March, 1990 by keeping a lien on the said post. This respondent was under a bonafide belief that until the lien*

comes to an end, there may not be a clear vacancy and, therefore, as and when such vacancy arises, his claim would be considered. It is in these circumstances, he did not file O.A. at an early date. If there be any delay, the same may be condoned.

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 O.A. 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 is now settled, see Secretary to Government of India and Others v. Shivam Mahadu Gaikwad.,*

8. *For the reasons stated above, the impugned order passed by the Administrative Tribunal on August 6, 1996 in O.A. No. 631 of 1994 is set aside and the said O.A. is dismissed on the ground of limitation. The Civil Appeal Nos. 3119 of 1997 and 3120 of 1997 are allowed. In the circumstances, parties are directed to bear their own costs."*

(14) In view of the aforesaid decision of the Apex Court, the petitioner's grievance was not at all maintainable before the Tribunal and consequently before this Court. The Tribunal considered the petitioner's original application both on the question of delay as well as on merits. It was held that the charges in the disciplinary proceedings and proceedings in the criminal cases are materially different therefore, question of the petitioner's claim relating to reinstatement in service on the basis of acquittal

in the criminal case is impermissible.

(15) The order of the CAT, Chandigarh is perfectly in order both on the ground of delay as well as on merit. Consequently, we decline to interfere with the order of the CAT, Chandigarh as well as order of the penalty dated 11.04.2002 read with rejection of appeal of the petitioner dated 29.01.2003 by the appellate authority. Accordingly, petition is dismissed.

No order as to costs.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

06.04.2015
pooja saini