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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 18th September, 2019*

+ W.P.(C) 1582/2018

SHRI K.K. SAXENA

..... Petitioner

Through: Mr.D.K.Sharma and Ms.Supriti Roy,
Advts.

versus

SECRETARY DIRECTORATE OF EDUCATION & ANR

..... Respondents

Through: Ms.Avnish Ahlawat, standing counsel
DoE with Mr.N.K.Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The prayer made in the O.A. filed by the petitioner stands dismissed by the Central Administrative Tribunal (the Tribunal) vide order dated 12.07.2011 on the ground of delay and laches. The Tribunal has observed that the delay in approaching the tribunal is of more than seven years.
2. Learned counsel for the petitioner submits that the petitioner was prevented from approaching the Tribunal on account of the fact that his salary was fixed as per the report of 3rd Pay Commission and being from a modest financial background, with lots of responsibilities to shoulder, he was left with no option but to continue working on a lower

pay scale than the ones he was rightfully entitled to. Several representations were made and since the petitioner did not have resources nor was he in the right frame of mind, he could not approach the Tribunal.

3. The period of limitation fixed under section 21 of the Administrative Tribunals Act, 1985 is one year from the date of cause of action.
4. Reliance is placed by the petitioner on the decision rendered by the Apex Court in *M.R. Gupta vs Union Of India & Ors*, 1995 (5) SCC 628 in support of his contention that since it is the petitioner's grievance that his pay fixation was not in accordance with the rules, it was a continuing wrong, giving rise to a recurring cause of action every month. Reliance is also placed on *Union Of India & Anr vs Tarsem Singh* reported as (2008) 8 SCC 648.
5. Ms.Avnish Ahlawat, counsel for the respondents has placed reliance on *Union of India & Ors. vs. M.K.Sarkar* Civil Appeal No.8151/2009 decided on 08.12.2009. Ms.Ahlawat has also placed reliance on *D.C.S.Negi vs. Union of India and Ors.* reported as (2018) 16 SCC 721 and submits that this judgment is fully applicable as it deals with Section 21 of the Administrative Tribunals Act, 1985. Para12, 13 & 14 of *D.C.S.Negi's* case (supra) are reproduced as under:

“12. Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21, which 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) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (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.”

13. A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).

14. In the present case, the Tribunal entertained and decided the application without even advertent to the issue of limitation. The learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant.”

6. We have heard learned counsels for the parties.
7. We find no infirmity in the view taken by the Tribunal for the reasons that the grounds raised seeking condonation of delay are not convincing. For the petitioner to continue to draw salary and to say that

he could not file an O.A. on account of modest financial background with lots of responsibilities, is vague, non-specific and does not inspire confidence.

8. With the above observations, the writ petition stands dismissed.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 18, 2019

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