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

% *Date of Decision: 28.02.2022*

+ **W.P.(C) 3493/2022 & CM No.10308/2022**

ASHUTOSH GAUTAM Petitioner

Through Mr M. K. Bhardwaj, Advocate
versus

ICAR AND ORS. Respondents

Through Mr S. K. Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE JASMEET SINGH

[Physical Court Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL) :

1. Issue notice.

1.1. Mr S. K. Gupta accepts notice on behalf of the respondents.

2. With the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself, based on the record presently available with the Court.

3. This writ petition is directed against the order dated 27.01.2022, passed by the Central Administrative Tribunal [in short, the "Tribunal"] in O.A. No.179/2022.

3.1. Mr M. K. Bhardwaj, who appears on behalf of the petitioner, says that the petitioner is aggrieved by the fact that the Tribunal has dismissed the aforesaid O.A. *via* the impugned order, simply, on the ground of limitation.

3.2 According to Mr Bhardwaj, apart from anything else, there was a challenge in the O.A. to the order dated 12.07.2021 passed by respondent no.4 i.e., Chief Vigilance Officer, Indian Council of Agricultural Research



[in short, “ICAR”], whereby the appointing authority for the post of Assistant Legal Advisor [in short “ALA”] i.e., Secretary, ICAR was appointed as the disciplinary authority *qua* the petitioner.

3.3 Mr Bhardwaj says that the petitioner was transferred from ICAR Headquarters to the Indian Agricultural Research Institute [in short, “IARI”], pursuant to order dated 03.05.2017. Mr Bhardwaj states that the petitioner continues to work with IARI.

3.4. Therefore, it is Mr Bhardwaj’s contention that the disciplinary authority *qua* the petitioner could only be the Director, IARI. In support of this plea, the petitioner, inter alia, has placed reliance on the communication dated 07.06.2019, addressed by the then Under Secretary (Vigilance), ICAR to the Director, IARI, as also the Office Memorandum dated 16.04.1969, issued by the Government of India, Ministry of Home Affairs; to which a reference has been made in the said communication.

3.5. This aspect of the matter has, concededly, not been decided by the Tribunal.

4. The operative directions issued in the impugned order dated 27.01.2022 are extracted hereafter:

“8. We find that applicant is challenging the memorandum dated 15.12.2016 and 05.01.2017 without giving any explanation as to the delay in approaching the Tribunal. No MA seeking condonation of delay has been filed either. It is well settled that an applicant has to explain each day's delay in approaching the Tribunal.

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10. From the perusal of the aforesaid section, it is abundantly clear that limitation prescribed for filing O.A. before this



Tribunal is one year from the date of accrual of the cause of action. The same can be extended by another six months from the date of filing of appeal, if the same is not decided. It has further been stated that if the application is not filed within time as stipulated in Section 21 of the A.T. Act, then the applicant has to move a Misc. Application for seeking condonation of delay by explaining the delay of each day in not filing the Original Application within the limitation. Section 21 of the Administrative Tribunal Act 1985 came up for consideration before the Hon'ble Apex Court in a catena of cases including the following cases:-

- (a) S.S. Rathore v. State of M.P. (AIR 1990 SC 10);*
- (b) Administrator of Union Territory of Daman and Diu and others Vs. R.D. Valand - 1995 Supp(4) SC.C. 593;*
- (c) State of Karnataka & Ors. Vs. S.M.Kotrayya & Ors. 1996 (6) S.L.R. S.C. Page 664);*
- (d) P.K.Ramachandran versus State of Kerala & Another (J.T. 1997(8) S.C. 189);*
- (e) Karnataka Power Corporation Limited through its CMD & Another vs. K.Thangappan & Another (2006(4) S.C.C. 322);*
- (f) U.P.Jal Nigam vs. Jaswant Singh & Ors. (2007(1) S.C.T. 225;*
- (g) C. Jacob vs. Director Geology & Mining (2008 (10) S.C.C. 115) ;*
- (h) Union of India & Ors. v. M.K. Sarkar reported in (2010)2 Supreme Court Cases 59; and*
- (i) Union of India & Ors. Versus A.Duairaj (J.T. 2011 (3) S.C. Page 254). ”*

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12. We also find that the applicant has made personal allegations against respondents No.3 to 5 but he has not been able to substantiate the same. It appears that the applicant in order to cover his own shortcomings has levelled false and baseless allegations against the aforesaid officials without any supporting document by merely alleging bias which cannot be



taken cognizance by the Tribunal. No case is made out for interference by the Tribunal.

13. In view of the above facts and circumstances of the case, we do not find any merit in this OA. Accordingly, the same is dismissed being devoid of merit besides being barred by limitation. There shall be no order as to costs.”

4.1. A perusal of the aforesaid extract would disclose that the Tribunal has failed to deal with one of the impugned orders in the O.A. i.e., order dated 12.07.2021. The Tribunal's failure to render a decision on tenability of the claim of the petitioner, which is, that only the Director, IRAI could have been made the disciplinary authority *qua* the petitioner, has impregnated the impugned order with illegality.

4.2. The petitioner had further contended in the O.A. that he is being victimised by respondent nos. 3, 4 and 5, because he had made complaints regarding respondent no 3 i.e., one, Mr Santosh Kumar Singh. It is the petitioner's contention that the said respondents have acted in collusion to deprive the petitioner of the increase in pay under the OM dated 18.06.2021 issued by ICAR. The order dated 12.07.2021 has been issued by respondent no. 4, one, Mrs Shaleen Agrawal, holding the position of the Director (DARE) and Chief Vigilance Officer, ICAR. This is an aspect which can be gone into, when the Tribunal re-examines the matter afresh, and, therefore, need not detain us at this juncture.

5. Accordingly, the impugned order dated 27.01.2022 is set aside and the matter is remitted to the Tribunal for a fresh hearing in the matter.

6. Needless to add, nothing stated hereinabove will impact the merits of the matter, and that the parties will be free to advance their respective contentions before the Tribunal.



7. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

JASMEET SINGH, J

FEBRUARY 28, 2022/pmc

Click here to check corrigendum, if any

