A STATE OF KARNATAKA AND ORS.

v.

S.M. KOTRAYYA AND ORS.

SEPTEMBER 2, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Administrative Tribunals Act, 1985.

S.21—Delay in approaching the Tribunal—Explanation therefor that relief granted in similar cases came to notice late—Tribunal condoning the delay—On appeal held, it is not necessary that explanation should be given for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of S.21—But explanation should be given for the delay which occasioned after the expiry of the period—Tribunal to satisfy itself whether the explanation offered was proper explanation—Coming to know of relief granted in similar cases is no proper explanation—Hence Tribunal wholly unjustified in condoning the delay.

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 12037-48 of 1996.

E From the Judgment and Order dated 14.8.89 of the Karnataka Administrative Tribunal at Bangalore in A. Nos. 4134-45 of 1989.

M. Veerappa for the Appellants.

D.V. Sehgal (A.C.) for the Respondents.

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The following Order of the Court was delivered :

Delay condoned.

Leave granted.

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At the outset, we express our deep appreciation for the valuable assistance rendered by Shri D.V. Sehgal, learned senior counsel who appeared as *amicus curiae* at our request since the respondents did not appear either in person or through counsel.

H These appeals by special leave arise from the common order of the

Karnataka Administrative Tribunal, dated August 14, 1989 made in Application Nos. 4134-45/89. The admitted facts are that the respondents, while working as teachers in the Department of Education, availed of Leave Travel Concession during the year 1981-82. But later it transpired that they had never utilised the benefit of LTC but drew the amount and used in. Consequently, recovery came to be made in the year 1984-86. Some of the persons filed applications in the Tribunal questioning the power of the Government to recover the same. It would appear that thereafter in August 1989 the Tribunal allowed similar claims and had held that the appellant-Government could not recover the same from the respondents. On coming to know of it, the respondents filed application in August 1989 before the Tribunal with an application to condone the delay. The Tribunal has condoned the delay by the impugned order. Thus these appeals by special leave.

Shri Veerappa, learned counsel for the appellant, placing reliance on the judgment of a Constitution Bench of this Court in *S.S. Rathore* v. *State of Madhya Pradesh*, [1989] 4 SCC 582 at 591, para 21, contended that the Tribunal has no power to condone the delay if the respondents had not given any explanation why they could not file the application within six months and if they came to be filed beyond six months covered by sub-section (2) of section 21 of the Administrative Tribunals Act, 1985 (for short, the "Act"), the Tribunal has no power to condone the delay. We find no force in the contention.

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

A 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 -

B (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,

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(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

D (b), of sub-section (1) *or with in 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*

E *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 they had sufficient cause for not making the application within such period."

F (emphasis supplied)

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) and (b) and specifies the period of one year. Sub-section (2) amplifies the limitation of one year in respect of grievances covered under clauses

G (a) and (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), if the applicants satisfy the Tribunal that they had sufficient cause for not making the applications within such period enumerated in sub-sections (1)

H 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 given power for making applications within one year of the grievances covered under clauses (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 occured during that 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.

The decision of the Constitution Bench in *S.S. Rathore's* case (supra) has no application to the facts in this case. Therein, this Court was concerned with the question whether the total period of six months covered under sub-section (3) had to be excluded in filing the petition in the suit, when it was transferred to the Tribunal under the Administrative Tribunal Order. In that behalf, the Constitution Bench held that a suit under a civil court's jurisdiction is governed by Article 58 of Limitation Act, 1963 and the claims for redressal of the grievances are governed by Article 21 of the Act. The question whether the Tribunal has power to condone the delay after the expiry of the period prescribed in sub-sections (1) and (2) of Section 21, did not arise for consideration in that case.

Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay with 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 was 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

A 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.

B The appeals are accordingly allowed. The order of the Tribunal is set aside. No order as to costs.

G.N. Appeals allowed.