RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 11th day of December 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Misc. Delay Condonation Application No. 330/01473/2018

In

Original Application No. 330/00708/2018

Amardeep, son of Late Girdhari, Resident of 1550/1497 EWS Ratanpura Colony, Panki District Kanpur.

.....Applicant

By Advocate: Shri S.K. Yadav

Versus

1. Chariman/Managing Director, Bharat Sanchar Nigam Limited, Headquarter, Corporate Office, H.C. Mathur Lane, Janpath, New Delhi 110001.
2. Circle High Power Selection Committee, Bharat Sanchar Nigam Limited, Office of Chief Development Manager, Telecom U.P East Circle Lucknow through its Chairman.
3. Assistant General Manager Parsh-IV Bharat Sanchar Nigam Limited Corporate Office Bharat Sanchar Bhawan Janpath Marg New Delhi 110001.
4. General Manager, Bharat Sanchar Nigam Limited, Kanpur.
5. Assistant General Manager, (Recruitment), office of Chief General Manager, Bharat Sanchar Nigam Limited East U.P Parimandal, Lucknow.

.....Respondents

By Advocate: Shri Anil Kumar/Shri D.S. Shukla

O R D E R

1. The present O.A. has been filed by the applicant Amardeep seeking direction to the respondents to appoint the petitioner on compassionate grounds. As per the applicant, his father Shri Girdhari died on 01.06.2004 while serving in the BSNL, Kanpur. It is the case of applicant that due to her physical condition, his mother refused to file the application for compassionate appointment and

told him to file the same. Therefore, the applicant vide application dated 18.10.2005 (Annexure II) applied for compassionate appointment. As per letter dated 09.01.2009 (Annexure No. 3) of the Circle High Power Committee, 93 compassionate ground appointment cases were examined out of which 40 cases having equal or more than 55 Net Points being indigent were recommended and forwarded to BSNL HQ for approval whereas 53 compassionate appointments cases having Net Points below 55 being non-indigent cases were rejected. That later-on he came to know that the respondents rejected his case on the ground that his family was not living in penury.

2. It is the further case of applicant that his case was rejected on the ground that his mother received Rs.359653/- as retiral benefits and Rs.2905/- as family pension. Thereafter applicant's mother filed an application dated 16.05.2011 (Annexure V) before respondent No.1 in which it is mentioned that the case of applicant was rejected vide order dated 25.10.2010. That the said review still pending though he submitted several applications thereafter as per application dated 15.04.2017, 24.11.2017 and 17.4.2018 (Annexure VIII).

3. Alongside the O.A., the applicant has filed the application for condonation of delay in filing the O.A. In the said application, it has been averred that father of applicant expired on 01.06.2004 and his compassionate appointment was recommended by the committee on 18.01.2009 but the same was rejected thereafter regarding which decision dated 26.11.2010, his mother filed a review application in March 2010 (however the review application

dated 16.05.2011). It is the further case of applicant that he continuously approached the Authority for a decision which is still pending and as per the advice of the Advocate he has filed the present O.A. and therefore, the delay, if any, be condoned.

4. In the objection, respondents have submitted that there arises no question of passing any order on the review application and that submitting repeated representations do not give any fresh cause of action so as to make it a ground to condone the delay.

5. Undoubtedly, the cause of action to file the O.A. occurred to the applicant in the year 2010 when candidature of applicant for compassionate appointment was refused by the respondents or at the most in 2011 when the mother of applicant filed a review for decision of 2010.

6. Learned counsel for the applicant argued that the applicant continuously approached the respondent for redressal of his grievance and lastly in March 2018, when respondents did not take any action with regard to his case, he filed the present O.A. and the delay, if any, has been satisfactorily explained in the application. On the other hand, argument was raised by the respondents that the O.A. is barred by period of limitation as envisaged by Section 21 of the Act since the cause of action pertains to the year 2010.

7. I have heard and considered the arguments of learned counsel for the parties and gone through the pleadings.

8. Section 21 of the Administrative Tribunals Act, 1985, deals with the limitation. Section 21 reads as follows:-

> ***"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 subsection (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 subsection (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".

9. On the question of delay, in Esha Bhattachargee Vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649, the Hon'ble Apex Court laid down the limitations applicable to an application for condonation of delay are of which is as follows :

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3. Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

22.1.An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort

for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto. 22.4. The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters".

10. In a recent decision in SLP (C) No.7956/2011 (CC No.3709/2011) in the matter of D.C.S. Negi vs. Union of India & Others, decided on 07.03.2011, by the Hon'ble apex Court, it has been held as follows:- "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)".

11. It is thus settled law 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 or else there should be sufficient cause for delay which is to be duly explained by the applicant.

12. In the instant case, applicant seeks relief pertaining to the year 2010/2011. Therefore the cause of action, if at all, occurred to the applicant in the year 2010 or at the most in 2011 when he filed the representation whereas the present *lis* has been filed in the year 2018. Undoubtedly, there has been a long delay in filing the O.A. Applicant has not given any sufficient reason, let alone a plausible reason to explain the delay in not filing the present O.A. in the year 2010/2011 or after the completion of the period after filing the representation.

13. The approach of the applicant from the beginning has been lackadaisical and indolent which is responsible for the inordinate delay in approaching this Tribunal. Delay and laches, on part of the applicant to seek remedy, are written large on the face of record. To repeat the observations of Hon'ble Apex Court - In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the petition needs to be dismissed.

14. Last but not the least, reference may be made to State Of Uttaranchal & Anr vs Shiv Charan Singh Bhandari & Ors on decided on 23 August, 2013 wherein the Hon'ble Apex Court on the question of laches and delay in coming to the court held as follows :

> ***"We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by***

oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

15. Even, the fact of making representations does not help the cause of applicant in taking the stand that his claim is not barred by period of limitation. On the question of filing representations and the legal effect, it was held by Hon'ble Apex Court in:

i. ***Union of India & Others Vs. M.K. Sarkar (2010) 2 SCC 58:-"15. When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of***

action for reviving the `dead' issue or time barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches"

ii. ***Jacob vs. Director of Geology and Mining, (2008) 10 SC 115 that:- The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.***

10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations,

cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."

16. It is a settled principle of law that the doctrine of delay and laches should not be lightly brushed aside. A court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary jurisdiction. It has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his/her own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances, delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. As observed by the Hon'ble Apex Court in Union of India Vs. Harnam Singh, 1993(2) S.C.C. 162, that the Law of Limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to aid of those who sleep over their rights and allow the period of limitation to expire.

18. In the facts of the present case, the claim of the applicant seeking relief of compassionate appointment which, if at all was available to her in 2010 or at most in 2011 is being made the subject matter of the present O.A filed in the year 2018, it is a stale and dead claim and cannot be entertained at this long lapse of time.

19. In view of the facts and circumstances of the case, I of the opinion that the present O.A. is hopelessly barred by period of limitation. In view of the facts of the present case, the claim of the applicant is a stale and dead claim and cannot be entertained after this long lapse of time. The O.A. is dismissed. No orders as to costs.

(**RAKESH SAGAR JAIN**)

Member (J)

Manish/-