RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 10th day of December 2019

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

Misc. Delay Condonation Application No. 4367 of 2013

In

Original Application No. 1435 of 2013

Rabari Devi wife of Shiv Pujan, Resident of Bhushan Colony Nagar Panchyat Ramkola, District Kushinagar.

.....Applicant

By Advocate: Shri Ramesh Rai/Shri Hari Pratap Singh

Versus

1. Bharat Sanchar Nigam Ltd., through Deputy General Manager (Administration) G.M.T (E) U.P. Circle, Lucknow.
2. Assistant General Manager (Administration) office of G.M.T.D. B.S.N.L. Deoria.
3. Chief Account Officer office of G.M.T.D. B.S.N.L. Deoria.
4. District Manager Telecom, Deoria.
5. Divisional Engineer (Phones), Kushinagar, Padrauna.
6. Sub – Divisional Engineer (Phones), Kaptanganj, Kushinagar.

.....Respondents

By Advocate: Shri D.S. Shukla

O R D E R

1. This order disposes of application filed by applicant Rabari Devi seeking condonation of delay in filing the O.A. Case of applicant is that first O.A. No. 522 of 2013 was withdrawn and being given liberty to file a fresh O.A on the same cause of action by the Tribunal vide order dated 03.05.2013, applicant filed the present O.A. on 06.11.2013.

2. Applicant's case is that she was appointed as part time casual labour in BSNL in December 1992. Under the Government Scheme for

conversion of part time casual labour (PTCL) to full time casual labour (FTCL). She was entitled to be converted to FTCL. The exercise of conversion of PTCL to FTCL started in the year 2000 and in the year 2004, when no decision was taken on the matter of conversion, applicant filed representation (Annexure No. 8) followed by second representation dated 11.10.2007 (Annexure No. 9). It is also the case of applicant that she is being paid Rs.287/- per month since December 1992 whereas she is to be paid the basis of minimum pay as per the Circular (Annexure No. 10). Applicant also placed on record certificates (Annexure No. 11) showing her attendance till the year 2009. Hence the prayer for convert the status of applicant from PTCL to FTCL and give the minimum pay as per Rules.

3. In reply, respondents have averred that the applicant was disengaged w.e.f.01.05.2007 and at time of disengagement the wages of applicant was Rs.1020/- per month. The circular relied upon by applicant for minimum wages applies to casual labourers having temporary status. Regarding the conversion from PTCL to FTCL respondents have specifically averred in Paragraph No. 22 of the CA that "That the contents of paragraph 4.13 of the original application as stated are incorrect hence not admitted and denied and in reply thereto it is stated that the conversion to full time casual labour from part time labour is not justified as per departmental Rules vide DOT New Delhi letter No. 269-13/99-Stn-11 dated 25.8.2000. In paragraph (iv) of the said letter dated 25.8.2000 it is specifically mentioned that 'there is no shortage in Group 'D' at the station where the part time casual labourers are working, the part time casual labourers will not be converted into full time casual labourers'. The copy of said letter dated 28.8.2000 is being filed herewith and marked as Annexure CR-3

to this counter reply". Therefore, as per, the CA, the O.A. besides barred by period of limitation has no merit and deserves to be dismissed.

4. Applicant seeking condonation of delay has taken the following pleas, as per, the application:-

> ***"2. That the case of the applicant regarding the conversion of the service status from casual labourer to full time labourer is under consideration since 2000 being started under letter dated 13.12.2000 written by District Manager Telecom and certain queries were asked time to time by the competent authority which has seen submitted by the relevant authority under their respective letters which have been brought on record by the applicant.***
>
> ***3. That the claim of the applicant is a continuous cause of action till it is made redressal by the authority and the authority despite of having every information has not passed any formal order till date therefore the applicant having no option except to approach this Hon'ble Tribunal.***
>
> ***4. That it would be not out of place to states that the applicant is poor and illiterate lady and has every belief with her authority to get redressal from them and therefore she has been regularly requesting to the authority to pass the formal order for conversing of status of her service and lastly in the month of March, 2013 when the authority did not pass a formal order regarding conversion of her status she approached to this Hon'ble Tribunal.***
>
> ***5. That the applicant humbly submits that she is not aware about the legal proceeding and therefore, if any, delay is being found by this Hon'ble Tribunal to approach before it, the same may be condone considering the status of the applicant and the circumstances under which the applicant is approaching to this Hon'ble Tribunal. It is further states that there is no deliberate or intentional delay to approach this Hon'ble Tribunal".***

5. In their objection to Application for Condonation of delay, respondents have taken the plea that the cause of action arose in the

year 2000 but the applicant filed the O.A. in the year 2013 and no sufficient reason has been advanced by the applicant for the delay in filing the O.A.

6. Undoubtedly, the cause of action to file the O.A. occurred to the applicant in the year 2000 or at the most in 2007 when she filed the representation.

7. Learned counsel for the applicant argued that the applicant continuously approached the respondent for redressal of her grievances and lastly in March 2013, when respondents did not take any action with regard to her case, she 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 2000.

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

9. 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".

10. 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".

11. 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)".

12. 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.

13. In the instant case, applicant seeks relief pertaining to the year 2000. Therefore the cause of action, if at all, occurred to the applicants in the year 2000 or at the most in 2007 when she filed the representation whereas the present *lis* has been filed in the year 2013. 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 filing the present O.A. in the year 2007 or after the completion of the period after filing the representation.

14. 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.

15. 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."

16. Even, the fact of making representations does not help the cause of applicant in taking the stand that her 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."

17. 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.

18. 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.

19. In the facts of the present case, the claim of the applicant seeking relief of conversion from PTCL to FTCL, pay scale etc. which, if at all was available to her in 2000 or at most in 2007 is being made the

subject matter of the present O.A filed in the year 2013, it is a stale and dead claim and cannot be entertained at this long lapse of time.

20. 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 applicants 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)

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