

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

...

**O.A. No. 290/00009/2020  
with M.A. No.290/00003/2020**

RESERVED ON : 09.01.2020  
PRONOUNCED ON: 17.01.2020

**CORAM:**

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)  
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Mangi Lal Solanki s/o Shri Ishwar Ram, aged about 61 years, resident of Bhagat Singh Colony, Opposite Government Primary School, Nokha, District Bikaner. Lastly posted as Telecom Technician, PGMTD, Bikaner.

...Applicant

(By Advocate: Shri Narpat Singh Rajpurohit)

Versus

1. Bharat Sanchar Nigam Limited through its Chairman and Managing Director, 7<sup>th</sup> Floor, Bharat Sanchar Bhawan, Janpath, New Delhi – 110 001.
2. Chief General Manager Telecom, Rajasthan Telecom Circle, Bharat Sanchar Nigam Limited, Sardar Patel Marg, C-Scheme, Jaipur-302008
3. Assistant General Manager (HR/Administration) O/o GMTD, Bikaner-334001.
4. Sub-Divisional Engineer (Rural), Bharat Sanchar Nigam Limited, Nokha-334803.

...Respondents

**ORDER**

**Per Mrs. Hina P.Shah**

The applicant in this OA is seeking promotion on the post of Phone Mechanic at par with his next junior Bihari Lal

and Jagdish Prasad by anti dating with all consequential benefits including revision of pensionary benefits and arrears with interest @ 12%.

2. The applicant stated that he was appointed as Lineman on 8.11.1982 in the respondent department. The Divisional Engineer (Administration) O/o GMTD, Bikaner issued order dated 21.7.1998 by which linemen who were working in Bikaner Telecom District were promoted as Phone Mechanic on adhoc basis w.e.f. 6.3.1995. Vide order dated 21.7.1998 (Ann.A/1) persons junior to the applicant had been given promotion on the post of Phone Mechanic but the applicant had not been given promotion. The respondents issued a gradation list of Telephone Mechanic, Bikaner corrected upto 31.01.2002 in which the name of the applicant is mentioned at S.No.104 and many juniors viz. Bihari Lal (S.No.105), Jagdish Prasad (S.No.106) and some other persons had been given promotion (Ann.A/2). Since junior persons had been given promotion on the post of Phone Mechanic w.e.f. 6.3.1995, therefore, they started drawing more salary than the applicant. During the service tenure, the applicant filed representation dated 3.9.2009 and 19.9.2013 (Ann.A/3) pointing out such anomaly, but no heed was paid by the respondents. Thereafter the applicant

retired on superannuation on 31.10.2018 and a PPO dated 8.1.2019 has been issued (Ann.A/5). On 23.05.2019, he again requested the respondents to make fixation of pay at par with his junior Bihari Lal (Ann.A/6). He also served a legal notice dated 3.8.2019 (Ann.A/7) to promote him on the post of Phone Mechanic as per the gradation list and make fixation with all benefits. The respondents vide reply dated 30.08.2019 to the legal notice of the applicant informed that only those employees were given benefit of promotion on the post of Phone Mechanic w.e.f. 6.3.1995, who applied under the restructuring cadre in the years 1991 and 1994 and since the applicant had not applied for the same, therefore, he is not entitled to get any benefit of promotion as well as stepping up of pay at par with juniors (Ann.A/8).

2. A Misc. Application for condonation of delay has been filed by the applicant stating that he had never been asked to submit any option under the restructuring cadre for promotion on the post of Phone Mechanic. In absence of such information/inviting option form from the applicant, the applicant could not submit any option form and for such, the applicant cannot be penalized. Due to non-communication of information in respect of exercising

option, the applicant could not exercise the same. The respondents vide order dated 21.07.1998, had given promotion to many junior persons on the post of Phone Mechanic, but the applicant had not been given promotion. On approaching the respondents, he was given only assurances. During the service tenure and thereafter he filed number of representations, but no heed was paid by the respondents. Due to non-grant of promotion and due to non-fixing of pay and pension at par with juniors, the applicant received less salary and is getting lesser pension and the same is recurring cause of action. Therefore, the delay in filing the OA is not intentional and the same may be condoned.

3. Heard the learned counsel for the applicant at admission stage and perused the material available on record.

4. The applicant in the present OA is seeking promotion on the post of Phone Mechanic w.e.f. 6.3.1995 and consequently fixation of pay and pension by filing the present OA in the year 2020, which is hopelessly barred by limitation. The applicant slept over his rights and only on 3.9.2009 (Ann.A/3) filed his first representation. After four years he further made representation dated 19.9.2013

(Ann.A/4). Thereafter he retired on superannuation on 31.10.2018 and after retirement, he also filed representation 23.5.2019 (Ann.A/6) and a legal notice was also served to the respondents for redressal of his grievance. It is evident from the record, that benefit of promotion on the post of Phone Mechanic w.e.f. 6.3.1995 was given to those persons who applied under the restructuring cadre in the year 1991 and 1994 and since the applicant had not applied for the same, he was not given benefit of promotion as well as stepping up of pay at par with juniors. The applicant's plea that due to non-communication of information in respect of exercising option, the applicant could not exercise the option, cannot be entertained at this belated stage. At the time of promotion of junior persons in the year 1998, the applicant has ample opportunity to raise grievance before the appropriate authority. But he slept over his rights and raised his grievance for the first time in the year 2009.

5. So far as repeated representations are concerned, it is settled law that repeated representations does not extend the period of limitation. The cause of action first time arose when vide order dated 21.7.1998 the persons junior to the applicant were given promotion and the applicant was not

promoted. The applicant did not raise his grievance and only in the year 2009 filed his first representation. Thereafter he continued making representations in the year 2013 and 2019.

6. The Hon'ble Apex Court in the case of **State of Tripura & Ors. vs. Arabinda Chakraborty & Ors.** reported in 2014 (2) SCC (L&S) 300, has given ruling with regard to the period of limitation in the following terms:-

"13. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done."

7. In the case of **C. Jacob V. Director of Geology and Mining and another** (2008) 10 SCC 115, the Hon'ble Apex Court has held that for the purposes of limitation the Court has to see as to when the original cause arose and in any case no fresh cause of action arise on the decision of the representation.

8. The Hon'ble Punjab and Haryana High Court in CWP No.26962/2015 in the case of **Kartar Singh vs. Managing Director, HVPNL and Ors.** decided on 4.4.2018 while considering the issue of delay and laches in para 9 and 10 observed as under:-

"9. In a recent judgment in State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others, 2013(6) SLR 629, Hon'ble the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. An order permitting a junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Any one who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches. Relevant paragraphs from the aforesaid judgment are extracted below:

"13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took

place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983.....  
xx                      xx    xx    xx

10. ....  
16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ 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 and equitable jurisdiction. As a constitutional court 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 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. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A



court is not expected to give indulgence to such indolent persons- who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

9. Considering the mater in the light of the ratio decided in the above referred cases, we are not satisfied with the reasoning given by the applicant for condonation of delay in filing the OA. Therefore, the Misc. Application for condonation of delay is required to be dismissed, which is accordingly dismissed. Consequently, the OA also stands dismissed as barred by limitation at admission stage. No order as to costs.

**(ARCHANA NIGAM)**  
**ADMV. MEMBER**

**(HINA P.SHAH)**  
**JUDL. MEMBER**

R/