

Central Administrative Tribunal
Principal Bench

O.A.No.1677/98

Hon'ble Mr. Justice K.M.Agarwal, Chairman
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 4th day of September, 1998

Sh. Gyan Singh
s/o Shri Sohal Pal
r/o Village, Jnipur Kalan
P.O.Shikar Pur
Distt. Bulandshahr, (UP).

... Applicant

(By Ms. Anupma Chandna, Advocate)

Vs.

1. Union of India through
The Secretary
Ministry of Home Affairs
New Delhi.

2. The Lt. Governor
Raj Niwas
Delhi.

3. The Dy. Commissioner of Police
(Headquarter) I
Delhi Police
Delhi.

... Respondents

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Hon'ble Shri R.K.Ahooja, Member(A)

The applicant seeks the benefit of the order of this Tribunal in OA No.640/86 decided on 22.8.1990 against which the SLP(Civil)No.5018/91 filed by the Union of India was dismissed by the Supreme Court on 07.01.1992 and further judgments of the Tribunal in OA No.1613/92 (Shri Jamshed Ali & Ors. Vs. UOI & Ors.), OA No.2280/92 (Shri Kamal Singh & Ors. Vs. UOI & Ors.) and O.A. No.69/93 (Madan Singh & Ors. Vs. UOI & Ors.) decided on 13.1.1993, 16.2.1993 and 6.8.1993 respectively. The facts of the case in brief are that the applicant was considered by the recruiting team sent by the Delhi Police to U.P. in August, 1985 and claims that he was included in the select list, after the requisite written

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test, medical examination and interview and his appointment was only subject to the verification of his antecedents. However, Standing Order No.212 in regard to the minimum percentage of marks required for selection in the recruitment test was enhanced only for recruitments made in U.P and consequently number of aspirants including the applicant came to be left out. This led to OA No.640/86 (Onkar Singh and Others Vs. Shri Ved Marwaha, Commissioner of Police & Others) decided on 22.8.1990, wherein the Tribunal held that the amendment is not applicable in the case of selections made in August, 1985 because the amendment was made subsequently and also because it was discriminatory as it was made only in respect of recruitments made in U.P. The SLP filed against the decision of the order of the Tribunal was dismissed on 7.1.1992. Subsequently OA No.1613/92 and OA No.2280/92 and OA No.69/93 were filed by other applicants who were similarly placed and the same were allowed. The present applicant states that he came to know of these decisions only in 1997 whereafter he made a representation to the Commissioner of Police and vide impugned letter dated 2.1.1998 he was informed that he had not been selected for the post of Constable as he could not make the grade and further that the representation was being rejected as being time barred. The applicant has also filed an MA No.1781/98 for condonation of delay, if any, in filing this OA.

2. We have heard the learned counsel for the applicant on the question of admission. The learned counsel has argued that the applicant expected the respondents to apply automatically the decision of the Tribunal in OA No.640/86 to all affected cases as it had

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been held that the amendment to the Standing Order No.212 introduced w.e.f. 31.3.1986 could not be made applicable only to the candidates selected from UP as it amounted to discrimination and was violative of Article 16(1) of the Constitution. The learned counsel submitted that it is a well settled position that the Government should apply the ratio of a judgment equally to all those who are in similar position so that they are also not obliged to go to the Court to seek redressal. She also cited a decision of the Supreme Court in Mahabir Kishore & Others Vs. State of Madhya Pradesh, AIR 1990 SC 313 in which the Supreme Court deprecated any resort to plea of limitation by public authority to defeat just claim of citizens observing that though permissible under law, such technical plea should only be taken when claim is not well founded.

3. We however find that in the present case the nature of plea and the ground taken for condonation of delay is totally unsatisfactory and in the facts and circumstances of the case the claim of the applicant cannot escape the limitation prescribed in Section 21 of the Administrative Tribunal's Act, 1985. Ordinarily the outer limit is one and half years from the date the cause of action arises. Condonation of delay under Sub-section 3 of Section 21 is subject to the applicant's satisfying the Tribunal that he or she had sufficient cause for not making application within the prescribed period. It has already been held in Bhoop Singh Vs. Union of India, JT 1992 (3) SC 322 that judgment and orders of the Court in other cases do not give cause of action. The cause of action has to be reckoned from the actual date. The applicant's claim for selection as Constable in Delhi

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Police arose in August, 1985 and even if he had made a representation, he could come before the Tribunal only within one year and six months thereof. The applicant submits that he waited for the decision of the Tribunal in OA No.640/86 decided on 22.8.1990. Even if this were to be accepted as a ground for condonation of delay, he should have come to the Tribunal within a reasonable period yet he waited for another eight years. We find that the Supreme Court in State of Karnataka Vs. S.M.Kotrayya, 1996(6) SCC 267 held that the mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal was not a proper explanation in justifying the condonation of delay. In that case the recovery on account of non-payment of LTC had been made in 1984-86 and the ~~Industrial~~ Tribunal had held in 1989 in a case that such recovery should not be made. The respondents before the SC filed an application in August, 1989. The ~~Industrial~~ Tribunal thereafter condoned the delay by the impugned order. The Supreme Court concluded as follows:

"Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which 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 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."

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4. In MA No.1781/98 the only explanation given for delay is that the applicant when he came to know that the Union of India had filed a SLP before the Supreme Court against the order of the Tribunal in OA No.640/86, had presumed that the matter would not come up for consideration by the Supreme Court for the next eight or nine years. On that understanding he did not make further enquiries till 1997 only to learn that the SLP had been disposed of as far back as in 1992.

5. We find that in the MA no indication, as to on what basis, such an assumption was made by the applicant. Obviously the applicant had slept over his claim and only woke up belatedly in 1997. As held by the Supreme Court in Rattan Chandra Sammanta & Others Vs. Union of India & Others, JT 1993(3) SC 418, delay deprives the person of remedy available in law and one who loses the remedy by lapse of time also loses his right.

6. In the result we find that the present OA is time barred. It is accordingly dismissed at the admission stage itself.

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(K.M. Agarwal)
Chairman

R.K. Ahooja
(R.K. Ahooja)
Member (A)

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