

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

**OA/021/00453/2017 with MA Nos. 196/2020,
113/2019, 202/2018, 355/2020 & 624/2018**

Date of CAV: 29.01.2021

Date of Pronouncement: 11.02.2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

N. Satyanarayana S/o Late Sri N. Bhimeswara Rao,
Occ : Principal Technical Officer, Aged about 41 years,
Centre for Development of Advance Computing,
Plot No.6 & 7, Hardware Park, Sy.No.1/1,
Srisailem Highway, Pahadi Shareef Via
(Keshavagiri Post), Hyderabad – 500 005,
R/o Flat No.302, Keerthy Residency, Balaji Nagar,
Kukatpally, Hyderabad – 500 072, T.S.

...Applicant

(By Advocate : Mr. K.Ram Murthy)

Vs.

1.Union of India, Represented by its Secretary,
Ministry of Electronics and Information Technology,
(Government of India), Electronics Niketan, 6,
CGO Complex, Lodhi Road, New Delhi-110003.

2.The Director General,
Centre for Development of Advanced Computing,
Pune University Campus, Ganesh Khind,
Pune – 411 007, Maharashtra.

3.The Executive Director,
Centre for Development of Advanced Computing,
Gulmohar Cross Road No.9, Juhu, Mumbai – 400 049,
Maharashtra.

4.The Director,
Centre for Development of Advanced Computing,
Plot No.6 & 7, Hardware Park, Sy.No.1/1,
Srisailem Highway, Pahadi Shareef Via
(Keshavagiri Post), Hyderabad – 500 005,

....Respondents

(By Advocate : Mr. Mr.M.Venkata Swamy, Addl. CGSC)

ORDER**(As per Hon'ble Mr.B.V. Sudhakar, Administrative Member)****Through Video Conferencing:**

2. The OA is filed challenging the rejection of the representation dated 22.12.2015 submitted by the applicant.

3. Brief facts of the case are that the applicant was appointed as a Staff Scientist in the pay scale of Rs.8000-13500 on 4.4.2001 by the National Centre for Software Development (for short "NCST") against an open advertisement. Applicant was made eligible for CPF instead of GPF. Respondents did not grant promotions based on the service rendered from 4.4.2001 till 30.6.2004 but granted increments from the initial appointment till the confirmation in the post. Representation was submitted on 22.12.2015 and the same was rejected and hence the OA.

4. The contentions of the applicant are that the appointment order dated 13.3.2001, as Staff Scientist has certain impermissible conditions which contradict the content of the advertisement. Applicant was not allowed to participate in the pension scheme though eligible, since New Pension Scheme started in 2004. If his initial service of 3 years rendered as Staff Scientist was reckoned, he would have been eligible for promotion as Senior Staff Scientist in 2004 and Principal Technical Officer in 2008. Instead, he got promoted to the said posts of 2007 and 2014 respectively. Though he is eligible for further promotions from April 2012 onwards, respondents have not taken steps to post him as Joint Director and Associate Director. Similarly placed employees are working as Joint Director. The track record

of the applicant has been good and never found unfit in any screening test. The impugned order is violative of Articles 14, 16, 21, 309 of the Constitution of India, Principles of Natural Justice and is discriminatory, arbitrary and illegal.



5. Respondents in their reply statement state that the initial appointment offered on 13.3.2001 is on contract basis for 3 years against available project vacancy and the applicant accepted the offer, wherein it was specified that he is eligible for CPF. Thereafter, he was appointed against a regular vacancy w.e.f. 1.7.2004 vide order dt. 21.9.2004, by which date the New Pension Scheme came into vogue. Applicant's representation was disposed duly on 4.3.2016. In fact, applicant was granted due promotions as Senior Staff Scientist in 2007 and as Principal Technical Officer in 2012 after completion of the minimum residency period (MRP) under Flexible Complementing Scheme, as per eligibility. Any promotions taken place under the new service has no connection with the service on contractual basis.

Applicant filed a rejoinder wherein he claims that the delay in filing the OA has been condoned in MA 379/2017. Applicant, being an unemployed, accepted the terms of offer as Staff Scientist on the oral assurance of the authorities that his services will be counted from the date of joining. Besides, GPF was available when he joined in 2001 and that the said facility was extended to Sri Neela Narayanan, who was similarly recruited like the applicant. Applicant did not apply for contract employment and contract employees are not extended GPF/CPF and other facilities except pay scale. The appointment is for a regular vacancy though the appointment



is a contract appointment, which has not been terminated before regularization. Hence, the appointment has to be considered as deemed regular appointment since the advertisement issued for Staff Scientist is for regular appointment. Respondents have committed an administrative error in issuing the appointment order in 2001. The services of 3 years have to be regularized as the said service was followed by a regular appointment. When he was offered appointment on 21.09.2004 on regular basis, the respondents have taken into consideration the continuation of accrued increments. Respondents are promoting contractual employees along with regular employees based on minimum residency period.

Respondents filed an additional reply asserting that the applicant has accepted the offer of appointment in 2001 on contract basis and never raised any objection in regard to CPF after he was appointed on a regular basis in 2004 but directly filed the OA after 16 years. Earlier representations submitted in 2015 and 2016 were in respect of promotion and never about GPF. The applicant has not exhausted the alternate remedies available under Section 20 of the AT Act 1985. The advertisement does not indicate that the post advertised was for regular appointment. Sri Neel Narayana was recruited under special recruitment drive conducted for reserved category and given regular appointment. NCST was offering only CPF to contract employees since its inception. Salary protection does not mean recognition of service in a particular category. Promotion is not based on mere eligibility. The applicant slept over his rights for a long period and has mixed up various causes of action. The OA suffers from delay and laches.

6. Heard both the counsel and perused the pleadings on record.

7. I. The reliefs sought by the applicant in the OA are as under:

“In view of the facts stated above, the Hon’ble Tribunal may be pleased to call for the records pertaining to Impugned Proceedings No. 6(4)/2016 ABCD dated: 04.03.2016 by 1st Respondent and declare the same as arbitrary, discriminatory, violation of Articles 14, 16 and 21 of the Constitution of India and also violation of Rules made under proviso of Article 309 of the Constitution of India and also against principles of Natural Justice and quash.



Consequently direct the Respondents to reconsider the case of the applicant for joining GPF Scheme from the initial appointment and to regularize the service from 04.04.2001 to 30.06.2004 for all purposes including pension, on par with similarly situated persons with all consequently benefits, in the interest of justice..”

II. The dispute is about regularizing the 3 years of service rendered by the applicant from 2001 to 2004 before being regularly appointed in the post of Staff Scientist in 2004 and not preponing his later promotions, as well as forcing the applicant to subscribe to CPF instead of permitting him to join the old pension scheme. Respondents state that he was appointed as Staff Scientist on a contract basis for 3 years in 2001 and hence, such service would not count for later promotions. Applicant retorts that as per the advertisement, he has been appointed against a regular vacancy though the appointment is a contract appointment and hence, his appointment as Staff Scientist has to be reckoned as deemed regular appointment. To resolve the dispute, the relevant portion of the advertisement (Annexure A-3) is extracted hereunder:

“Applicants are invited from R & D professionals and academics for appointments at NCST in the following grades:

<i>Position</i>	<i>Grade</i>	<i>Experience</i>
<i>Principal Research Scientist</i>	<i>(16400-450-20000)</i>	<i>18 Yrs.</i>
<i>Senior Research Scientist</i>	<i>(14300-400-18300)</i>	<i>13 Yrs.</i>
<i>Research Scientist</i>	<i>(12000-375-16500)</i>	<i>8 Yrs.</i>
<i>Senior Staff Scientist / Manager (SPC)</i>	<i>(10000-325-15200)</i>	<i>4 Yrs.</i>
<i>Staff Scientist/ Asst. Manager (SPC)</i>	<i>(8000-275-13500)</i>	<i>4 Yrs.</i>

The salaries carry allowances and benefits roughly on the Central Government pattern.

General: University level qualification in the Computer area is necessary. Those with Post Graduate degrees particularly PhD are preferred for Senior R & D positions. Applicants with PGDST, EPGDST or PGDIT or NCST can also apply. Candidates having B.Sc. Electronics/ Computers & MCA will be considered for the post of Asst. Manager (SPC) and Diploma in Electronics / Computers & B.E. in Electronics or Computer Science for the post of manager. Those applying for senior R & D positions should have a proven record of experience in R & D or teaching in the computer field.

Age limit: 29 years plus the number of years of minimum relevant experience listed above.



Special drive to recruit Scheduled Caste/ Scheduled Tribe/ OBC candidates:

Applications are specially invited from the candidates belonging to the above mentioned reserved categories for the following positions:

Position: Staff Scientist/ Assistant Manager II Grade: 8000-275-13500

Qualification: One of the following: Computer Science or Computer Engineering Degrees, BE, B.Tech., MCA, M.Sc., MCS, MCM, M.Tech, PGDST, EPGDST or PDGIT of NCST or any other degree equivalent to a B.E., in Computer Science or Information Technology.

Age limit: 34 years for SC/ST Candidates. 32 years for OBC candidates. The age limits are as per relaxed rules applicable to SC/ST/OBC."

As can be seen from the advertisement, it is not mentioned that the vacancies are regular vacancies nor is it adduced that applications have been invited for regular appointment. Hence, the contention of the applicant that he has been appointed against a regular vacancy is incorrect.

III. Besides, a reading of the offer of appointment dated 13.3.2001 issued to the applicant would disclose the following conditions, relevant to the dispute, are as under:

"Dear Shri Satyanarayana,

With reference to the test and interview you had at NCST, Bangalore on February 25/26, 2001, the Centre has decided to offer you a contract appointment for a three-year period, against a project vacancy currently available at the Centre.

1. *You are offered appointment as Staff Scientist on a starting salary of Rs.8275/- (Rupees eight thousand two hundred seventy five only) per month in the grade Rs.8000-275-13,500 plus allowances as per the rates in force.*

2. *Subject to your performance here being good, you will be eligible, for appointment to a regular post in future on the basis of internal review and decision, as you have already applied against a public advertisement, undergone a written exam, and have been interviewed.*

3. *Your appointment is subject to the Rules, Bye-laws and Service Conditions of this Centre, as modified from time to time. You will be eligible for contributory provident fund as per CPF rules of the Centre, but not for participation in the pension scheme during the three years of the contract appointment.*

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8. *Your performance will be reviewed periodically and at least once a year. NCST reserves the right to terminate your appointment by giving 30 days' notice (or 30 days' honorarium in lieu of notice) if the review finds your work unsatisfactory. If you resign, you will be required to give 30 days' notice of your intention to do so.*

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11. *You can indicate your acceptance of this offer by signing the copy of this letter enclosed and returning it to us. “*



The appointment is on a contract basis for 3 years basis against a project vacancy available at the Mumbai Centre and that he is eligible for CPF and not for the pension scheme. The appointment is subject to the Bye laws, Rules, etc of the centre. Further, it was also made clear that he can be considered for appointment to a regular post in the future since he has been selected through the written exam and interview. Applicant accepted the offer and joined the respondents organisation on 4.4.2001 vide his joining report (Annexure R-2). Applicant pleads that since he was unemployed, he accepted the contract appointment on the oral assurance of the authorities that the services rendered on contract basis would be duly considered. The submission appears to be an afterthought since the applicant has pointed that another candidate Sri Neela Narayana was allowed to join the pension scheme, which, he contends, is irregular and discriminative. When the applicant was aware that another candidate was granted a benefit, for which he too was eligible, then it would have been appropriate to take up with the concerned authorities about his right to be allowed to join the old scheme and if there was a negative response, the legal domain was wide open to pose a challenge to the respondents to ensure that his right is fructified. The



applicant did not do so. Nevertheless, in respect of Sri Neela Narayana, we observe that he has been selected on a regular basis under special recruitment drive to recruit SC/ST/OBC candidates whereas applicant was selected on a contract basis for a period of 3 years to a project vacancy available at that point of time. Therefore, Sri Neela Narayana was allowed to opt for old pension scheme which was operational in 2001, as a regular employee. NCST (National Centre for Software Technology) in which applicant was appointed on contract basis, as a matter of policy allowed CPF to contract employees. The applicant would have had a case if any other contract employee like him was allowed to opt for the old pension Scheme by the respondents. Applicant did not point out any such case and hence comparing himself with a regularly appointed employee and seeking the benefit sought is incorrect.

IV. Later, the contract was extended by the respondents vide their letter dated 9.7.2003 before the contract could expire on 4.4.2004 reiterating the initial conditions of offer made in offer of appointment issued on 13.3.2001. Thereafter, the applicant was appointed on a regular basis on 21.9.2004 w.e.f. 01.07.2004. By that time, the New Pension scheme was implemented w.e.f. 1.1.2004 and hence the applicant would be eligible for CPF and ineligible for GPF. There can be no two opinions on this.

V. However, when it comes to regularization of the services rendered from 4.4. 2001 till 30.6.2004, as claimed by the applicant, we are of the view that though the appointment of the applicant was to a project vacancy available at that relevant point of time, on a contract basis, it was done through an open advertisement and based on a written exam as well as



an interview. Hence the selection was through the regular process in 2001. Besides, the contract appointment was followed by a regular appointment. The applicant had a case had he been alert. The respondents cannot brush it aside simply on the basis that the earlier appointment was a contract appointment since it is an admitted fact that he was selected through a regular process of selection and the contract employment was followed by a regular employment. However, the OA has been filed after 16 years of the offer of appointment, which is too late in the day. The applicant should have challenged at least when his services were regularized in 2004. The prolonged delay in filing the OA cannot be ignored. Even representations were submitted belatedly in 2014/2015. The relief sought by the applicant after much water has flown in the river Ganga is like unscrambling a scrambled egg. The Tribunal has to exercise discretion to not to encourage a stale claim because the applicant did not take expedient steps to fructify his claim and the applicant allowed things to happen over the years like accepting later promotions. Applicant is like a fence sitter watching the drama of his promotions being unfolded without reckoning the contractual service rendered and after many years, raising a hue and cry about the same, would, *defacto* not be of any avail. Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience and vigilant citizens ought not to be treated alike with mere opportunists. Delay defeats equity. Even presuming that the applicant, though not admitted, had a right to be treated on par with Sri Neela Narayana, it was at that interval of time that the applicant should have approached the appropriate judicial forum. Applicant did not. We are therefore, of the view that at one point of time equity that existed in favour of the applicant has melted into insignificance and became

extinct with the passage of time. The applicant is well placed, knowledgeable and is into the profession of a scientist which facilitates a scientific mind to explore the unexplored. In these circumstances, it cannot be said that the applicant was not in a position to approach the judicial forum to fight for his right. However, applicant approaching the Tribunal at his sweet will has to expect a sour finding. Our remarks made above are broadly based on the recent observations of the Hon'ble Supreme Court in **Chairman/Managing Director, U.P.Power Corporation Ltd & Ors vs Ram Gopal on 30 January, 2020 in CIVIL APPEAL NO. 852 OF 2020** [Arising out of Special Leave Petition (Civil) No. 36253 of 2016] regard to delay and latches, as under:



iii) Inordinate delay in filing writ petition

14. Finally, the prolonged delay of many years ought not to have been overlooked or condoned. Services of the Respondent were terminated within months of his appointment, in 1978. Statedly, the Respondent made a representation and served UPPCL with a legal notice in 1982, however such feeble effort does little to fill the gap between when the cause of action arose and he chose to seek its redressal (in 1990).

*15. Seen from a different perspective also, it is clear that the Respondent has shown little concern to the settled legal tenets. Even a civil suit challenging termination of services, if filed by the Respondent, would have undoubtedly been barred by limitation in 1990. In a similar situation where the appellant belatedly challenged the promotion of his junior(s), this Court in **P.S. Sadasivaswamy v. State of Tamil Nadu 1974 AIR 2271, 1975 SCR (2) 356, (1975) 1 SCC 152**, held as follows:*

“2. ... if the appellant was aggrieved by it he should have approached the Court even in the year 1957, after the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. ... In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now. ...It is not that there is any period of limitation for the Courts to exercise their powers under [Article 226](#) nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under [Article 226](#) in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.....”



16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. *In SS Balu v. State of Kerala* (2009) 2 SCC 479 3 (2012) 7 SCC 610 this Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”
(emphasis supplied)

17. Similarly, in *Vijay Kumar Kaul v. Union of India*³ this Court while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, this Court observed that:

“27. ...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.”

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19. The order passed by the High Court for retention of Shyam Behari Lal in service, does not possess any ingredient of a Judgment in rem. The above cited exception, therefore, does not come to the Respondent's rescue. It is also pertinent to mention that neither has it been pleaded nor is it apparent from the material on record that the Respondent was unable to approach the court of law in time on account of any social or financial disability. Had such been the case, he ought to have availed free legal aid and should have ventilated his grievances in a timely manner. Instead, he seems to be under the assumption that the termination order is illegal, that he consequently has a right to be reinstated, and that he can agitate the same at his own sweet will. Neither of these three assumptions are true, as elaborated by us earlier.”

Another aspect which cannot be lost sight of, is that the promotions granted over the years would have resulted in fixing the seniority in different cadres. It is well settled in law that settled seniority cannot be unsettled. Any relief granted as sought by the applicant to prepone his promotions gravitate against the settled law referred to.

VI. In respect of appointment/promotions granted to the applicant, the details are extracted hereunder:



<i>Grade & Scale (5th PC/ 7th PC)</i>	<i>Joining Date</i>	<i>Details/ Reasons</i>
<i>E-I/ Technical Officer/Staff Scientist Rs.8000-275-13500 (level-10)</i>	<i>4.4.2001</i>	<i>Contract Appointment (service rendered in erstwhile NCST)</i>
<i>E-I/ Technical Officer/Staff Scientist Rs.8000-275-13500 (level-10)</i>	<i>01-July-2004</i>	<i>Regular Appointment with one year probation period</i>
<i>E-II/ Sr. Technical Officer/Sr. Staff Scientist Rs.10000-325-15200 (level-11)</i>	<i>06-Sep-2007</i>	<i>Promotion given w.e.f. 06-Sep-2007</i>
<i>E-III/ Principal Technical Officer 12000-375-16500 (Level-12)</i>		<i>Called for promotion interview for July 2011 cycle but the interview committee not recommended</i>
<i>E-III/ Principal Technical Officer 12000-375-16500 (Level-12)</i>	<i>1 July 2012</i>	<i>Promotion</i>
<i>Joint Director Level – 13</i>		<i>Called for promotion interview for July 2017 cycle but the interview committee not recommended</i>
<i>Associate Director Level – 13A</i>	<i>Not applicable</i>	<i>Not applicable</i>

Applicant claims that by considering his initial years of service referred to, which could not be positively considered by the Tribunal in view of the legal principle enunciated by the Hon'ble Apex Court as at above, his later year promotions are to be preponed. Promotions are granted based on many factors like evaluating the APARs, performance, penalties etc and not just based on eligibility. As can be seen from the above table the applicant has been granted promotions as and when he completed residency period from the date due by the respondents based on the recommendations of the competent committee. However, when it came to the post of JD the competent committee found him unfit, substantiating our point of view that mere eligibility is not the only royal road to promotions. For Associate Director, applicant has to wait for his turn as per rules and law.

VII. Further, it is the policy of the respondents organisation as laid down at clause 9 of the letter dated 19.9.2016, that past cases ought not be reviewed. In matters of policy, the Tribunal has a very narrow band to interfere unless it is malafide, as observed by the Hon'ble Uttarkahand High

Court in **Prakash Chandra vs. State of Uttarakhand And Others** on 10 October, 2019 in Writ Petition (S/B) No. 467 2019, by relying on a number of cases adjudicated by the Hon'ble Apex Court, as under:



“9. Even otherwise, what the petitioner seeks is for a mandamus to be issued to the State Government to amend the 2007 Rules. While the High Court, undoubtedly, has the power to strike down Rules, if they fall foul of Part-III of the Constitution of India, that would not justify the High Court taking upon itself the task of amending Rule 7 of the 2007 Rules or to issue a mandamus to the State Government to do so. Legislative power is exercised by the legislature directly or, subject to certain conditions, may be exercised by some other authority on such a power being delegated to them. But exercise of that power, whether by the legislature or by its delegate, is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. No court can issue a mandate to a legislature to enact a particular law. Similarly no court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact. (Supreme Court [Employees' Welfare Association v. Union of India](#): AIR 1990 SC 334; [State of J&K v. A.R. Zakki & others](#): AIR 1992 SCC 1546; [State of Andhra Pradesh v. T. Gopalakrishna Murthi and Ors](#): AIR 1976 SC 123; [Mangalam Organics Ltd. vs. Union of India](#): (2017) 7 SCC 221 and [Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory Himachal Pradesh](#): AIR 1971 SC 2399; [Dhananjay Verma vs. State of Uttarakhand & others](#): Full Bench judgment in Writ Petition (S/B) No.45 of 2014 dated 21.05.2019).

10. While it has the power to strike down a law on the ground of want of authority, this Court would not sit in appeal over the policy of the State Legislature in enacting a law. [[Rusom Cavaisee Cooper v. Union of India](#): (1970) 1 SCC 248]. Just as it cannot direct a legislature to enact a particular law, (Supreme Court [Employees' Welfare Association v. Union of India](#): AIR 1990 SC 334), the High Court, under [Article 226](#) of the Constitution of India, cannot direct the Executive to exercise power by way of subordinate Legislation, pursuant to the power delegated by the Legislature to enact a law, in a particular manner. ([Indian Soaps and Toiletries Makers Association vs. Ozair Husain and Ors](#): (2013) 3 SCC 641; [Dhananjay Verma vs. State of Uttarakhand & others](#): Full Bench judgment in Writ Petition (S/B) No.45 of 2014 dated 21.05.2019).

11. It is not within the domain of the Court to legislate. The Courts interpret the law, and have the jurisdiction to declare the law unconstitutional. But, the courts are not to plunge into policy making by adding something to the policy by issuing a writ of mandamus. ([Census Commissioner and Ors. v. R. Krishnamurthy](#): (2015) 2 SCC 796 and [Mangalam Organics Ltd. vs. Union of India](#): (2017) 7 SCC 221). A writ of Mandamus cannot be issued to the Legislature to enact a particular law, or to the Rule making authority to make rules in a particular manner or even to the Government to frame a policy. (Supreme Court [Employees' Welfare Association v. Union of India](#): AIR 1990 SC 334; [State of J&K v. A.R. Zakki & others](#): AIR 1992 SCC 1546; [State of Andhra Pradesh v. T. Gopalakrishna Murthi and Ors](#): AIR 1976 SC 123; [Mangalam Organics Ltd. vs. Union of India](#): (2017) 7 SCC 221 and [Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory Himachal Pradesh](#): AIR 1971 SC 2399; [Dhananjay Verma vs. State of Uttarakhand & others](#): Full Bench judgment in Writ Petition (S/B)

No.45 of 2014 dated 21.05.2019). Since increase in the upper age limit from 35 to 42 years can only be made by an amendment to the 2007 Rules, which power is legislative in character, the relief which the petitioner seeks, for a mandamus to enhance the upper age limit from 35 to 42 years, cannot be granted.”



Hence, in view of the plethora of judgments of the Hon'ble Supreme Court not to intervene in policy matters by the judicial fora, it would be inappropriate for the Tribunal to intervene in the policy matter of the respondents cited supra with respect to review of promotions granted in the past.

VIII. The order of the Hon'ble Ernakulam Bench of this Tribunal in OA No. 180/00020/2015 cited by the Id. Counsel for the applicant would therefore, not be of much help to seek the relief as per the law laid down by the Hon'ble Apex in its own judgments in regard to delay and policy matters.

IX. Hence, based on the deliberations expounded in the paras supra, though we sympathise with the applicant, we cannot intervene on his behalf to grant the reliefs sought. Hence the OA is dismissed with no order as to costs. Pending MAs accordingly stand disposed.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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