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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2563/90
with Misc. Petition for
condonation of delay.

DATE OF DECISION: 19-7-1991.

Dr. B. Chakravorty Applicant.
V/s.

Union of India & Anr. Respondents.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J).
Hon'ble Mr. A.B. Gorthi, Member (A).

Shri Amal Dutt with Shri S.D. Sharma, counsel for the
applicant.

Shri P.H. Ramchandani, Sr. Counsel for the respondents.

A.B. Gorthi:

JUDGEMENT

This is a Miscellaneous Petition filed for condonation of delay in filing the Original Application No.2563/90. The applicant was initially appointed on ad-hoc basis on 5.9.1980 as a Senior Physician and his appointment was regularised with effect from 26.11.1982. He was then senior to Dr. K.K. Malhotra and Dr. N. Bihari as per seniority list of Specialists Grade I Officers. In 1985, he was superseded for promotion, but Dr. K.K. Malhotra was promoted. Again in 1987, Dr. N. Bihari was promoted, but the same was denied to the applicant. It seems that due to certain adverse remarks entered in his A.C.R. for 1983, he was superseded as aforesaid. The applicant's representation against the adverse remarks in the A.C.R. was accepted and the adverse remarks were expunged. A Review Departmental Promotion Committee meeting was held on 30.8.1988, but the applicant was not recommended for promotion as Consultant in Medicine. However, the Departmental Promotion Committee, at its meeting held on 11.10.1988, approved the applicant for promotion as Consultant in Medicine. Accordingly, he was appointed as Consultant in Medicine in Safdarjang Hospital (C.G.H.S.), New Delhi, vide order dated 4.1.1989.

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2. On 16.1.1989, the applicant addressed a letter (Annexure 'B') to the Secretary, Ministry of Health & Family Welfare (Respondent No.1), protesting against the grant of seniority to him from the date of assumption of the charge of the post of Consultant in Medicine. The applicant's plea was that his earlier seniority should have been restored. His plea was considered by respondent No.1, who rejected the same, vide Annexure 'C' dated 10.2.1989. The applicant once again approached respondent No.1, vide letter dated 22.2.1989 (Annexure 'D') asking for the reasons for which he was not considered for promotion by the DPC held in 1985. Respondent No.1 replied vide Annexure 'E' dated 3.4.1989 that the applicant's name was considered by the DPC in 1985, but was not recommended for promotion to the post of Consultant in Medicine. He was further informed that after expunction of the adverse remarks in his A.C.R., the DPC met on 30th August, 1988, but came to the same conclusion as arrived at by the DPC in 1985. For the third time, the applicant approached respondent No.1, explaining his case in detail, vide Annexure 'F' dated 21.7.1989, requesting that he be placed in the seniority list of Consultants in Medicine above Dr. K.K. Malhotra and Dr. N. Bihari. The said request of the applicant was turned down by respondent No.1, vide Annexure 'G' dated 5.9.1989. The applicant then filed in January, 1990 what he termed as a Review Petition, vide Annexure 'H' addressed to respondent No.1. The said Review Petition was again considered in the Ministry and was rejected vide Memorandum dated 20.2.1989 (Annexure 'I').

3. Having failed in his efforts to secure relief from respondent No.1, the applicant filed this O.A. on 5.12.1990. We have heard Shri Amal Dutt, learned counsel for the applicant and Shri P.H. Ramchandani, learned senior counsel for the respondents at length on the Misc. Petition for the

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condonation of delay. Learned counsel for the applicant contended that Annexures 'B', 'D' and 'F' were not representations as such but only requests made by the applicant seeking clarifications and information from respondent No.1. His main petition to respondent No.1 was Annexure 'H', which was rejected by respondent No.1 on 20.2.1990 and hence the application filed on 5.12.1990 was within the period of limitation. Even if the aforesaid communications from the applicant were to be treated as representations, the application deserves to be admitted on merits and the Tribunal should not reject it merely on the technical plea of limitation. In any case, the Tribunal has the power under Section 21(3) of the Administrative Tribunals Act, 1985 (the Act) to admit the application if it is satisfied that the applicant had sufficient cause for not making the application within the period of limitation.

4. Placing reliance on the judgment of the Hon'ble Supreme Court in SUALAL YADAV v. THE STATE OF RAJASTHAN AND OTHERS (AIR 1977 S.C. 2050), learned counsel for the applicant contended that since respondent No.1 had entertained the various representations and the final Review Petition by the applicant, the period thus spent by the applicant in pursuing his case with respondent No.1 should not reckon for the purpose of limitation. The fact in that case was that a review application made to the Governor after a lapse of about two years was considered by the Governor and rejected on merits. That being the position, it was held that it was not open to the High Court to resurrect the ground of delay in the review application at a remote stage and make it a ground for dismissing the writ application. The said case obviously has no direct relevance to the applicant's case.

5. Calling in aid a decision of the Tribunal in the case of A. SANTHANAM v. DIRECTOR, NATIONAL AERONAUTICAL LABORATORY AND ANOTHER (1990(1) SLR 412), learned counsel for the applicant

contended that even where repeated representations were made before the concerned authorities, they should be taken into consideration while determining the question of limitation. That was a case where despite repeated representations, the respondents did not respond to the representations within a reasonable time. On the other hand, in the instant case, it can be seen that each and every representation made by the applicant was replied without any delay.

6. The main contention of the learned counsel for the applicant is that as laid down by the Hon'ble Supreme Court in COLLECTOR, LAND ACQUISITION, ANANTNAG AND ANOTHER v. MST. KATLI AND OTHERS (AIR 1987 S.C. 1353), refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. Moreover, the theory that every day's delay must be explained in a petition for condonation of delay should be applied in a pragmatic manner and should not mean that a pedantic approach should be taken.

7. Opposing the Misc. Petition, Shri Ramchandani, learned counsel for the respondents, drew our attention to the case of S.S. RATHORE v. STATE OF MADHYA PRADESH (1989(2) SCALE 510) wherein Hon'ble Ranganath Misra, J, as his Lordship then was, observed:

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not

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provided by law are not governed by this principle."

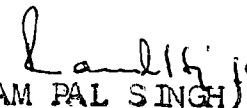
8. As regards the various communications addressed by the applicant to respondent No.1, there can be no doubt that they are all in the nature of representations against the fact that he was given seniority in the post of Consultant in Medicine from the date of assumption of the charge of that post. In any case, his third communication to respondent No.1 (Annexure 'F'), which was made on 21.7.1989 cannot be said to be anything other than a representation. In fact, the very first sentence of Annexure 'F' reads, "I have represented several times that my seniority in the list of Specialists' Grade I Officers of CHS should not be taken from the date of my regularisation". It ends up with a prayer that he be placed in the seniority list above Dr. K.K. Malhotra and Dr. N. Bihari. This was turned down by respondent No.1 on 5.9.89. The subsequent so-called review petition preferred by the applicant in January, 1990 is nothing but a repeated representation for which there was no statutory provision. Thus, even taking a liberal view of the matter, the Original Application filed on 5.12.1990 is beyond the period of limitation as laid down in Section 21 of the Act, which lays down that a Tribunal shall not admit an application in a case where a final order 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. The cause of action can be said to have occurred on 4.1.1989, on which date the applicant was promoted as a Consultant in Medicine and was given seniority in that post from the date of assumption of charge. The applicant should have, therefore, chosen either to pursue his case with the concerned superior authority or to come before this Tribunal keeping in view the provisions contained in Section 21 of the Act. Having pursued his case with respondent No.1 for a period of one year, he should have taken steps to approach this Tribunal without allowing another ten months

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to pass.

9. In the facts and circumstances of the case as aforestated, we are not inclined to condone the delay, as we are not satisfied of the sufficiency of the cause for not making the application within the period of limitation. Accordingly, the Original Application as also the Misc. Petition for condonation of delay in filing the Original Application are hereby dismissed.


(A.B. GURTHI)
MEMBER (A)

 19.7.91
(RAM PAL SINGH)
VICE CHAIRMAN (J)

19.7.1991.