Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH, ALLAHABAD.

Original Application No. 321 of 2004

This the 8th day of February, 2006

HON'BLE MR. K.B.S. RAJAN, MEMBER-J

Chand Miyan, S/o Sri Lal Khan, Aged about 38 years, R/o 307, Tulsi Nagar, Orai, District Jalaun (U.P.).

.... Applicant

By Advocate : Sri S.S. Sharma.

Versus

1. Union of India through the General Manager, North Central Railway, Headquarters Office, Allahabad.
2. The D.R.R., N.C.R., DRM's office, Jhansi.
3. The Section Engineer (P.Way), N.C.R., Orai, District Jalaun.

....Respondents

By Advocate : Sri Gautam Chowdhary

O R D E R

The controversy in this OA is as to whether the applicant, who claims that he had worked for 256 days as per the Left Hand Thumb Impression Register, should be afforded the same benefits of reinstatement and regularization as given to similarly placed persons who were juniors as also who had not worked for even 120 days to qualify for regularization but in whose case such benefits were given only on the basis of the Court's order. In

other words, the question is whether the applicant who did not approach the Tribunal as the juniors did should be penalized for his not approaching the Tribunal. In fact, according to the order of the Tribunal, a lever has already been given that if any junior to the applicants (in the said OA) had been regularized, then the applicants should also be regularized. Respondents contend that first of all the applicant cannot be permitted to raise this issue after 12 years of his disengagement as it is settled law that if a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Plea of limitation has also taken place and during arguments the respondents had vehemently argued that the case is hopelessly time barred. They relied upon the judgment of the Apex Court in the case of Bhoop Singh vs Union of India, 1992 (3) SCC 136 Again, according to the respondents, the number of days the applicant had been engaged came to only 93 days and since he was engaged in a project work the minimum number of days of work should be 180 days for consideration for regularization etc., the authentication certifying the days of work as 256 was wrong and as such it was later on amended on 17-05-2004.

2. Question of this kind frequently cropping up, it is essential to give a comprehensive details of

the facts of the case and law on the subject which would be useful for future cases like nature as well.

3. The case of the applicant as congealed from his OA is as under:-

(a) The applicant was initially engaged as casual Labour on the post of Khalasi on 23.9.1985 and worked as under :-

(i)	23.9.85 to 9.4.85	= 200 days
(ii)	24.4.86 to 18.6.86	= 56 days
	Total	= 256 days

(b) As per para 2001 of Indian Railway Establishment Manual Vol. II, Casual Labour on completion of more than 120 days of continuous service shall be treated as temporary. The rights and privileges admissible to such labour shall also include the benefit of Railway Servants Conduct Rules, 1963 and the Railway Servants (D&A) Rules, 1968.

(c) No action was taken to regularize his services as temporary and he was discontinued on 9.4.1986 and thereafter he was re-engaged on 24.4.1986 and was again discontinued on 18.6.1986 allowing several juniors to the applicant to work in the same unit.

(d) Some of the casual labourers who were discontinued filed OA no. 1550 of 1992 in re. **Prahlad & Others Vs. Union of India & Others**. The applicants of the aforesaid OA had worked as under:-

(i)	Raj Kumar	91 + 341 days
(ii)	Krishna Pal	210 days
(iii)	Indra Sen	77 days
(iv)	Prahlad	25 days
(v)	Kailash	139 days

(vi) Suresh Chandra 151 + 664 days
(vii) Amar Chandra 779 days

(e) In the meantime, the services of the applicant were regularised as temporary.

(f) The Tribunal allowed the aforesaid O.A. no. 1550 of 1992 and directed the respondents as under :-

> *".....We direct the respondents to re-screen the service of the applicants and if those engaged on open line work had completed more than 120 days and those engaged on project work had completed more than 180 days, grant their temporary status and allow them benefits. Names of the applicants shall be entered on the live register for casual labour after re-screening is completed granting the applicants their rightful place in it on the basis of their period of service. If any, of the applicant is able to furnish name/names of his junior/juniors and establish the re-engagement of such person/persons, the respondents are directed to re-engage him and give him all benefits from the date of engagement of his junior/juniors."*

(g) In compliance of the judgment, all the applicants of the aforesaid O.A. were re-engaged and at present all these persons are working. All these persons have been regularised as permanent employee in Group 'D' posts.

(h) The applicant had worked for 256 days as temporary status Khalasi and the following applicants of the aforesaid O.A. were junior to the applicants.

Sri Prahlad 25 days (23.2.84 to 18.3.84)
Sri Indra Sen 77 days (3.9.85 to 18.11.85)
Sri Kailash 139 days (3.5.82 to 18.9.92)
Sri Krishan Pal 210 days (22.2.85 to 3.11.85)

(i) When the applicant came to know the fact that aforesaid juniors to him had been re-engaged, he made representation and

ultimately was compelled to file an Original application no. 706 of 1998.

(j) The Tribunal vide judgment and order dated 25.4.2003 disposed of the O.A. as under:-

> *"Accordingly the O.A. is disposed of with a direction to respondent NO.3 i.e. Permanent Way Inspector (P.W.I), Orai, District Jalaun to consider and decide the representation of the applicant with a reasoned and speaking order within a period of four months from the date of receipt of a copy of this order".*

(k) The Section Engineer/P. Way, vide letter dated 2.9.2003 decided applicant's representation with non-speaking averments that there is no vacancy and other senior to the applicant are also waiting for regularization and rejected the representation.

(l) Decision of Section Engineer vide letter dated 2.9.2003 is without verifying fact that juniors to the applicant have already been re-engaged vide letter dated 6.5.1997 and thereafter the following much juniors to the applicant have also been re-engaged.

Sl. No.	Name.	Working days.
1	Gariba	127 days (1972-81)
2	Ganpat	89 days (1980-81)
3	Imrat	89 days (1978-82)
4	Chhota	198 days (1978-80)

(j) It is learnt that before making aforesaid re-engagement, the General Manager, asked the Divisional Authorities to intimate names of the Casual/temporary status labour borne on Live Register. Name of the applicant was not sent despite his representation in this respect, resulting the applicant was ignored and junior to

the applicant were re-engaged and regularised and are working under the respondents.

(k) Applicant vide letter dated 19.10.2003 again made a representation giving full particulars of his working days and name of the aforesaid juniors already re-engaged, screened and regularised and working as regular Gangman.

4. Respondents' contention as given in their counter is as under:-

"(a) In compliance and pursuance of order dated 02.09.2003 the case of the applicant was well considered under light of circular of Railway Board dated 03.09.1996. The circular clearly states that those on roll be only considered for regularization. The applicant was not in the roll at the time of moving his representation.

(b) The present application is not within the limitation.

(c) As per record of the office of the respondents the applicant worked with effect from 23.09.1985 to 03.11.1985 and 29.4.1986 to 10.6.1986 for 42 & 51 days respectively that is 93 days. The project was completed on 18.06.1986 and hence after the completion of the work there was no necessity of casual labour.

(d) As far as, the applicant is concerned, letter dated 01.07.2003 was wrongly issued which has been further modified and corrected the letter dated 17.05.2004.

(e) The applicant worked only for 93 days. The applicant is not covered under para 2001 of Indian Railway Establishment Manual Volume-II. Moreover applicant worked under the project and for the project casual labour the required days are 180 days for acquiring temporary status to the causal labour.

(f) In compliance of the order of this Hon'ble Tribunal, Inder Sent and Prahlad also got the regularization but according to the law prevailing the applicant not completed 180 days hence the applicant is not entitled for the temporary status and regularization.

(g) Applicant in O.A. No.1550/92 approached this Hon'ble Court within reasonable time but the applicant before this Hon'ble Tribunal not approached within the reasonable time as the applicant was lastly engaged upto 1986 and filed O.A. 706/98 in the year of 1998 after the lapse of 12 years.

5. Applicant had filed the rejoinder which apart from the reiteration of his stand taken in the OA also contains the following:-

(a) It is incorrect that the applicant has not completed 120 days service as per letter dated 01.09.2003. The applicant has worked as per LTI Register (Left Thumb Impression Register) being maintained.

(b) It is an original authentic and legal record on the basis of which services of casual labour are verified and their names are also kept on Casual Live Register. As

per page no. 32/63 of Left Thumb Impression Register, the working period and number of days of the applicant are given as under:-

i.	23.09.1985 to 09.04.1986	=	200 days
ii.	29.04.1984 to 29.04.1986	=	56 days
Total number of days			256 days

(c) It is incorrect that the present application is not within the limitation. The applicant has been filed against the impugned order dated 02.09.2003.

6. Though no provision exists for filing of any sir-rejoinder, yet, the respondents have filed the supplementary counter and the contents of the same in nut shell are as under:-

(a) Relevant document to show the period of working is casual labour card but the casual labour card was never produced by the applicant before any of the authority or before this Court.

7. Arguments were heard at length and the documents perused. First, certain provisions as contained in the Railway Board's circular relating to regularization.

8. **R.B.E. No. 78/96 and RBE 190/2001 :**

The above notifications, annexed to the Counter Affidavit as Annexure nos. 1 & 2 read as under :

RBE No. 78/96

"Attention is invited to All (Staff) Railway Board's D.O. Letter of even number dated 12.8.1996 advising the Railways of the

announcement made by the Hon'ble Minister in Parliament in the course of his reply to the discussion on the railway budget for 1996-97, that **all the 56,000 approx. Casual labour on roll as on 30.4.96 will be regularised by 1997-98** and requiring the Railways to draw an action plan to ensure that the absorption of all casual labour on roll is completed by December,97, so that a position of no casual labour on roll is achieved by that date.

2. The matter has been further considered by the Board who have decided to lay down the following guidelines for the Railway so as to smoothen the process of absorption and to ensure that the target of December 1997 for complete absorption of casual labour on roll is met.

(i) Railways should **henceforth not engage any casual labour** so that with the regularization of all the casual labour on roll by December 97 as per the assurance given by the Hon'ble Minister the position of no casual labour is reached by December,97.

(ii) All the **vacancies in the lowest grade in Group 'D'** including the resultant vacancies due to promotion within Group 'D' and from Group 'D' to Group 'C' upto December, 97 in each department **should be assessed and casual labour available** in the department **equal to the number of Group 'D' vacancies** thus worked out, **should be screened for regularization.**

(iii) After the screening of casual labour against the vacancies of the department as above has been completed, **the left over unscreened casual labour of the department should be screened for regularization in other departments**

against vacancies in the lowest grade in Group 'D' including the resultant vacancies due to promotion within Group 'D' and from Group 'D' to Group 'C' upto December'97.

(iv) In the process of posting after screening as above, it is possible that **some of the casual labour may have to be posted to stations other than those at which they are working. It should be made clear to them that any refusal to move on transfer** on their part **would result in forfeiture of the benefit of screening for regularization.**

(v) In the process of a screening, it should be ensured that **the quota for SC,ST & OBC is strictly adhered to and in case sufficient candidates are not available from these categories for screening, the posts are kept vacant and not de-reserved.**

(Emphasis supplied)

RBE No.190/2001

In terms of para 6 of the Ministry's letter of even number dated 28.02.2001, relaxation of upper age limit for absorption of ex.casual labour borne on Live Casual Labour Supplementary Live Casual Labour Registers has been allowed upto 40 years in the case of general candidates, 43 years in the case of OBC candidates and 45 years in the case of SC/ST candidates, provided that they have put in minimum three years service in continuous spell or in broken spells as per instructions contained in this Ministry's letter No.E(NG)-II/91/CL/71 dated 25.07.1991, read with their letter No. E(NG)-I/95/PM-1/1 dated 11.1.1999.

2. The question of removal of minimum three years service condition (continuous or broken) for the purpose of grant of age relaxation to ex. casual labour as mentioned above has been taken up in the PNM-NFIR vide agenda item No.41/2001. AIRF have also taken up the question of enhancing the upper age limit. The matter has been carefully considered by this Ministry. It has been decided that, in partial modification of the instructions quoted above, the **ex-casual labour who had put in minimum 120 days casual service, whether continuous or in broken spells, and were initially engaged as casual labour within the prescribed age limit of 28 years for general candidates and 33 years for SC/ST candidates would be given age relaxation** upto the upper age limit of 40 years in the case of general candidates, 43 years in the case of OBCs and 45 years in the case of SC/ST candidates. Other provisions for their absorption in Group 'D' will remain unaltered.

(Emphasis supplied)

9. **R.B.E. 232/98** annexed with the Rejoinder Affidavit as Annexure R-II reads as under:-

"3. **Board desire that the notices of screening alongwith the lists of persons to be screened** out of the persons borne on the Live Register and/or Supplementary Live Register as the case may be (the total no. of persons on the list being equal to the no. of vacancies required to be filled up by the Screening), **shall be issued** under the signature of an officer of the Personnel Branch of the Division concerned. **In addition to displaying the Notice alongwith the list,** on the Notice Board(s), etc. **he will also send a letter under his signature enclosing a copy of**

the notice and the list to each of the individuals concerned by Registered post A/D advising that in case the individual does not turn up, his name will be deleted from the casual labour Live Register/Supplementary Casual Labour Registers as the case may be, **and that thereafter he would have no further claim for consideration for absorption** by screening in Group 'D', so that there is no difficulty in taking action for deletion of the name of those who do not turn up.

10. R.B.E. 42/2001 annexed with the Supplementary Counter Affidavit reads as under:-

"2. In terms of the instructions contained in Board's letter No. E(NG)II-98/RR-1/107 dated 4.12.98, **minimum educational qualification for direct recruitment to Group 'D' posts in scale Rs. 2610-3500 has been laid down as Class VIII passed.** Further, in terms of Ministry of Railway's letter No. E(NG)II/91/CL/71 dated 25.7.91, age relaxation to the extent of service put in as casual labour/substitute subject to upper age limit of 40 years in the case of general candidates and 45 years in the case of SC/ST candidate not being exceeded, may also be granted in the case of casual labour/substitutes for recruitment against Group 'C' and 'D' posts.....

11. Now a look at the preliminary objection relating to limitation:

Section 21 of the Administrative Act provides as under:-

"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) * * *

(3) Notwithstanding anything contained in sub-section (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."

12. The above provision of the A.T. Act came up for consideration by the Apex Court in the case of *State of Karnataka v. S.M. Kotrayya, (1996) 6 SCC 267* and the Apex Court analyzed the same as under:-

7. A reading of the said section would indicate that sub-section (1) of Section 21 provides for limitation for redressal of the grievances in clauses (a) and (b) and specifies the period of one year. Sub-section (2) amplifies the limitation of one year in respect of grievances covered under clauses (a) and (b) and an outer limit of six months in respect of grievances covered by sub-section (2) is provided. Sub-section (3) postulates that notwithstanding anything contained in sub-section (1) or sub-section (2), if the applicants satisfy the Tribunal that they had sufficient cause for not making the applications within such period enumerated in sub-sections (1) and (2) from the date of application, the Tribunal has been given power to condone the delay, on satisfying itself that the applicants have satisfactorily explained the delay in filing the applications for redressal of their grievances. When sub-section (2) has given power (sic right) for making applications within one year of the grievances covered under clauses (a) and (b) of sub-section (1) and within the outer limit of six months in respect of the grievances covered under sub-section (2), there is no need for the applicant to give any explanation to the delay having occurred during that period. They are entitled, as a matter of right, to invoke the jurisdiction of the court for redressal of their grievances. If the applications come to be filed beyond that period, then the need to give satisfactory explanation for the delay caused till date of filing of the application must be given and then the question of satisfaction of the Tribunal in that behalf would arise. Sub-section (3) starts with a non

obstante clause which rubs out the effect of sub-section (2) of Section 21 and the need thereby arises to give satisfactory explanation for the delay which occasioned after the expiry of the period prescribed in sub-sections (1) and (2) thereof.

13. The applicant had averred in para 3 of the OA as under:-

"The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985."

14. In the case of *Ramesh Chand Sharma v. Udham Singh Kamal, (1999) 8 SCC 304*, at page 307: -

On the contention that in the absence of any application under sub-section (3) of Section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of the OA on merits, the Apex Court has held as under:-

"6. *Learned counsel for the first respondent urged that after his representation was rejected by the Himachal Pradesh Government on 2-7-1991, he had made another representation pointing out the factual position and, therefore, the period of limitation needs to be counted not from 2-7-1991 but from the date of rejection of his second representation (no date mentioned). He also urged that the vacancy arose because one Shri Sita Ram Dholeta who was holding the post and working as Translator-cum-Legal Assistant went on deputation in March 1990 by keeping a lien on the said post. This respondent was under a bona fide belief that until the lien comes to an end, there may not be a clear vacancy and, therefore, as and when such vacancy arises, his claim would be considered. It is in these circumstances, he did not file OA at an early date. If there be any delay, the same may be condoned.*

7. *On a perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the OA filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on*

merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled (see Secy. to Govt. of India v. Shivram Mahadu Gaikwad[1]).”

15. The provisions of Section 21 apply with full force when it goes in tandem with certain other principles of jurisprudence, such as a long practice is in vogue consistent with the provisions of Constitution. (In other words, a settled position cannot be unsettled). In this regard, it is appropriate to refer to the decision in the case of *Govt. of A.P. v. Mohd. Ghouse Mohinuddin,(2001) 8 SCC 416* wherein the Apex Court has held as under:-

***6.** We have considered the rival submissions and we find considerable force in the submission of Mr Nageswara Rao and Mr Prabhakar appearing for the appellants, both on the question of delay as well as on the interpretation of the Presidential Order as well as the order issued by the State Government, in exercise of powers under para 3(1) of the Presidential Order. From the impugned order of the Tribunal as well as the materials on record, it is crystal clear that the notifications issued by the State Government in the year 1976, organising smaller units of cadre in respect of non-gazetted posts, remained operative till the Tribunal was approached in 1992-93. The recruitment, promotion and other service conditions of these employees, in respect of posts enumerated in the order of the State Government was made within the organised cadre, issued by the State Government, which was essentially meant for equitable opportunities and facilities in the matter of public employment. **It is a cardinal principle in service jurisprudence, that a particular method or procedure adopted for a long time, need not be ordinarily interfered with, unless such method is repugnant to any constitutional provision or is contrary to any statutory rule. That apart, under the Administrative Tribunals Act, a period of limitation is provided for, in Section 21. In this view of the matter, when the units formed the cadre, pursuant to notifications issued by the State Government, in the year 1976, in respect of non-gazetted posts and on that basis, appointment to and promotion within the cadre was being considered, in respect of non-gazetted posts, applications filed before the Tribunal in 1992-93, after expiry of more than 15 years, could not have been entertained and the settled position could not have been unsettled, as has been done by the Tribunal in its final order.** On

this ground alone, the impugned order cannot be sustained.

(Also see *Y. Ramamohan v. Govt. of India,(2001) 10 SCC 537*)

16. It is to be seen as to when the cause action arises so that from that date to limitation shall commence. In the case of *S.M. Munawalli v. State of Karnataka,(2002) 10 SCC 264* it has been held:

> ***3.*** *Heard the learned counsel for the parties. It is apparent that the order dated 18-8-1995 passed by the Karnataka Administrative Tribunal (for short "the Tribunal") dismissing the petition solely on the ground of limitation is erroneous because in the present matter* ***the appellant claims that his pension should be fixed on the basis of his seniority after taking into consideration his past service in Agricultural Produce Market Committee, Ramadurga. The dispute with regard to the pension arose only on 28-2-1993. The application was filed before the Tribunal in 1995. Hence it cannot be said that it was barred by delay.*** *In this view of the matter, the impugned order passed by the Tribunal is quashed and set aside. The Tribunal is directed to decide the matter afresh on merits and consider whether as per rules the previous services rendered by the appellant in other departments as contended by him can be taken into consideration for determining the pension payable to him (*In all probability, the dated 28-02-1993 in this case would be the date of retirement of the individual and his entitlement to pension arises only after the said date. Thus, irrespective of the date on which the applicant would have severed his connection with the Agricultural Produce Market Committee, Ramadurga and joined the main stream in the State of Karnataka, the limitation commences only from the date when his entitlement to pension commenced)

17. Limitation should be strictly construed when a third party's rights may be infringed. See *A.J. Fernandis v. Divisional Manager, South Central Railway,(2001) 1 SCC 240* wherein the Apex Court has held:

> *14. Even otherwise, it is to be noted that the appellant got promoted to the post of Ticket Collector on 28-5-1983. He was thereafter promoted as a Senior Ticket Collector on 25-9-1986. The appellant was then promoted as a Train Ticket Examiner on 25-5-1987. The 3rd respondent chose to challenge the promotion of the appellant as a Ticket Collector only*

on 11-12-1987, i.e., after a period of 4 years. On the ground of delay and laches also the application of the 3rd respondent should have been dismissed.

18. A latitude given by the Tribunal to the employee permitting him to file a representation which the respondent was to dispose of, cannot elongate the limitation period. See *State of Orissa v. Chandra Sekhar Mishra,(2002) 10 SCC 583* wherein the Apex Court has held as under:-

> ***3. In the instant case, the respondent was appointed as Homoeopathic Medical Officer and he was issued a notice dated 13-12-1977 informing him that his services would be terminated with effect from 31-1-1978. The respondent chose to challenge the order of termination by filing an OA in 1992. The Tribunal by order dated 23-11-1995 directed that a representation be filed with the State Government. The said representation was filed and the same was rejected.*** *The respondent again approached the Tribunal and the Tribunal purporting to follow orders which had granted relief to other claimants allowed the OA and directed the appellant herein to appoint the respondent as a Homoeopathic Medical Officer with retrospective effect with all service benefits.*
>
> ***4.*** *In our opinion, there were two fundamental errors in that relief being granted to the respondent. Firstly,* ***the services of the respondent were terminated with effect from 31-1-1978 and the respondent did not approach the Tribunal within the period of limitation provided by the statute.*** *On this ground alone, the Tribunal should not have entertained the appeal. Secondly, the respondent was appointed on 1-2-1972 on contract basis for a period of three years. This period of contract was extended up to 31-1-1978. When the respondent was only a contractual employee, there could be no question of his being granted the relief of being directed to be appointed as a regular employee.*

19. Power to Condone delay is a discretionary power vested with the judicial authority and the same depends upon the facts and circumstances of each case. In the case of *Y. Ramamohan v. Govt. of*

India,(2001) 10 SCC 537 it has been held by the Apex Court as under:-

> ***1.*** *This appeal is directed against the impugned order of the Tribunal in OA No. 612 of 1990. By the impugned order, the Tribunal rejected the claim of the appellants solely on the ground of delay and laches on the part of the appellants in approaching the Tribunal. The appellants are promotee officers to the Indian Forest Service, and on promotion they have been allotted 1976 as the year of allotment. Their seniority has been determined by treating them to be 1976 allottees, and the common gradation list was prepared as early as on 3-5-1983. The year of allotment in favour of the appellants in the year 1976 was assailed before the Tribunal by the direct recruits in OA No. 611 of 1986, and the present appellants were arrayed as party-respondents in the same. That application was dismissed by the Tribunal on the ground that the direct recruits have approached the Tribunal after a long lapse of time, obviously, contentions being raised on behalf of the present appellants, who were respondents therein. There is a positive finding in the earlier order of the Tribunal that the Principal Chief Conservator of Forests has, in fact, communicated the common gradation list in his proceedings dated 3-5-1983. Subsequent to the order of the Tribunal in the earlier case, the appellants appear to have filed a representation before the Central Government seeking allotment year of 1974, and that representation having been rejected, they approached the Tribunal in 1990. The Tribunal in the impugned order came to the conclusion that the applicants having approached the Tribunal after a long lapse of time, there has been gross laches and as such, the same should not be entertained. It is this order of the Tribunal which is being assailed in this appeal.*
>
> ***2.*** *Mr Gururaja Rao appearing for the appellants vehemently contended that the Tribunal was not justified in dismissing the application on the ground of laches on the part of the appellants, particularly when there is a positive assertion of the appellants that they did not know of the earlier gradation list prior to the order of the Tribunal in the earlier case filed at the instance of the direct recruits. Even if that is assumed to be correct, notwithstanding a positive finding of the Tribunal in the earlier proceedings wherein the appellants were party-respondents to the effect that the Principal Chief Conservator of Forests has, in fact, communicated the common gradation list dated 3-5-1983, even then there was no rationale or logic on the part of the appellants to file a representation to the Central Government claiming that the order of allotment should be 1974. Even if they have come to know of the gradation list during the course of the proceedings in 1986, we see no justification for them*

not approaching the appropriate authority within a reasonable time, and having waited for more than 3 years they have approached only in the year 1990. We, therefore, do not see any illegality with the order of the Tribunal dismissing the claim of the appellants on the ground of laches. ***Before us, four authorities of this Court have been cited in support of the contention that the application ought not to have been rejected on the ground of laches only. But in each and every case, what has been noticed is that the question whether the discretion of the Court or the Tribunal should be exercised for condoning the laches would depend upon the facts and circumstances of each case.*** *In the case in hand, when the Tribunal itself has recorded a finding in the earlier case that the gradation list had been duly communicated in the year 1983, we must assume that the applicants knew of the gradation list assigning them the year of allotment as 1976, in 1983, and therefore the so-called representation filed by the appellants to the Central Government after disposal of the earlier application filed by the direct recruits is nothing but a subterfuge to get a period of fresh limitation. This method adopted by the appellants disentitles them to any relief.* ***That apart, the gradation list of the year 1983 allotting 1976 as the year of allotment to the appellants has almost settled the seniority list, which need not be disturbed after this length of time****. We, therefore, see no infirmity with the impugned order of the Tribunal requiring our interference in the matter. The appeal is accordingly dismissed.*

20. Once the Tribunal arrives at a conclusion that limitation has hit a particular case, it should not go into the merit of the matter. See ***Commandant, TSP v. Easwaramoorthy,1999 SCC (L&S) 643*** wherein the Apex Court has held:

1. *The respondent who was working as a Havaldar in the Tamil Nadu Special Police was compulsorily retired from service by an order dated 28-2-1979. Though it was stated that in 1985, he moved the High Court challenging the order of compulsory retirement, that was not established. Again, before moving the Tribunal in 1993, he was said to have made a representation on 6-2-1992 for reconsideration of the order dated 28-2-1979, compulsorily retiring him from service. Thereafter the appellant has moved the Tamil Nadu Administrative Tribunal challenging the order compulsorily retiring him from service. In spite of unexplained inordinate delay in moving the*

Tribunal and in the face of express provisions of Section 21, the Tribunal has entertained the application and granted the relief. The Tribunal in its order as stated as follows:

> *"Therefore the basis for the appellant's case is not valid. He has come forward with this application belatedly in 1993 after his representation, said to have been made on 6-2-1992. His contention that he had filed a writ petition in 1985 and the papers returned were lost, is not in any manner supported. Even if such application had been filed in 1985, that was belated and the further delay thereafter till 1993, inexcusable."*

2. *Notwithstanding the above observations, the Tribunal went into the merits and set aside the order of compulsory retirement and directed to pay pension as if he retired in the normal course.*

3. *The impugned order of the Tribunal is totally unsustainable as* ***having not accepted the excuses given by the respondent for the long delay of 14 years, the Tribunal went wrong in going into the merits and in granting the relief****. We do not think that the Tribunal was right in going into the merits of the case. Accordingly, the appeal is allowed. The order of the Tribunal is set aside. There will be no order as to costs.*

21. Highly belated claims cannot be entertained by the Tribunal, as held by the Apex Court in the case of ***A.K. Mitra (Dr), DG, C.S.I.R. v. D. Appa Rao, (1998) 9 SCC 492:*** *"The Tribunal was not justified in entertaining the claim of the first respondent to reopen an issue relating to the year 1972 in the year 1988."* And in particular, if the case fails on merit also, the limitation has to be taken into consideration, vide ***Union of India v. O.P. Saxena, (1997) 6 SCC 360,*** **at page 364 :**

22. When the claim of the government servant is justified for a period anterior to more than three years from the time of filing of the O.A. before the Tribunal, while granting relief the Tribunal could set the clock back upto three years prior to the institution of the O.A., vide ***Jai Dev Gupta v. State***

of H.P., (1997) 11 SCC 13 wherein the Apex Court has held as under:-.

> *The appellant approached the Central Administrative Tribunal for the relief that he is entitled to the pay scale of Lecturer in Commercial Arts though he was appointed to the post of "Studio Artist". In addition to that he claimed the difference in the salary from the year 1971. He approached the Tribunal for this relief in May 1989. The Tribunal accepted the claim of the appellant that he should be paid the salary of Lecturer in Commercial Arts though he was appointed to the post of "Studio Artist" in view of the fact that he was performing the duties of Lecturer in Commercial Arts. However, the Tribunal granted the relief of difference in back wages from May 1988 only on the ground that under Section 21 of the Administrative Tribunals Act the period of one year is prescribed for redressal of grievances. Against the decision of the Tribunal that the appellant is entitled to be paid the salary of Lecturer in Commercial Arts though he was appointed as "Studio Artist" the respondents have not filed any appeal. The appellant has preferred this appeal claiming the difference in back wages from the date of his posting as Lecturer in Commercial Arts.*
>
> ***2.*** *Learned counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was making a number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May 1989. We do not think that such an excuse can be advanced to claim the difference in back wages from the year 1971. In Administrator of Union Territory of Daman and Diu v. R.D. Valand[1] this Court while setting aside an order of the Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned counsel for the appellant that the difference in back wages should be paid right from the year 1971. At the same time we do not think that the Tribunal was right in invoking Section 21 of the Administrative Tribunals Act for restricting the difference in back wages by one year.*
>
> ***3.*** *In the facts and circumstances of the case, we hold that the appellant is entitled to get the difference in back wages from May 1986. The appeal is disposed of accordingly with no order as to costs.*

23. If on an application filed by an employee, a law point is decided by the Court, others similarly situated could well rely upon the said decision and move the legal forum for redressal and limitation under such circumstances should not normally come in their way and the Court should exercise the discretion in a way liberal to the claimant. In the case of ***K.C. Sharma v. Union of India, (1997) 6 SCC 721***, the Apex Court has held as under:-

> ***3.*** *This appeal is directed against the judgment of the Principal Bench of the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") dated 25-7-1994 in OA No. 774 of 1994. The appellants were employed as guards in the Northern Railway and they retired as guards during the period between 1980-1988. They felt aggrieved by the notifications dated 5-12-1988 whereby Rule 2544 of the Indian Railways Establishment Code was amended and for the purpose of calculation of average emoluments the maximum limit in respect of Running Allowances was reduced from 75% to 45% in respect of the period from 1-1-1973 to 31-3-1979 and to 55% for the period from 1-4-1979 onwards.*
>
> ***4.*** *The validity of the retrospective amendments introduced by the impugned notifications dated 5-12-1988 had been considered by the Full Bench of the Tribunal in its judgment in C.R. Rangadhamaiah v. Chairman, Rly. Board[1] and connected matters and the said notifications insofar as they gave retrospective effect to the amendments were held to be invalid as being violative of Articles 14 and 16 of the Constitution. Since the appellants were adversely affected by the impugned amendments, they sought the benefit of the said decision of the Full Bench of the Tribunal by filing representations before the Railway Administration. Since they failed to obtain redress, they filed the application (OA No. 774 of 1994) seeking relief before the Tribunal in April 1994. The said application of the appellants was dismissed by the Tribunal by the impugned judgment on the view that the application was barred by limitation. The Tribunal refused to condone the delay in the filing of the said applications.*
>
> ***5.*** *The correctness of the decision of the Full Bench of the Tribunal has been affirmed by this Court in Chairman, Rly. Board v. C.R. Rangadhamaiah[2] and connected matters decided today.*

> ***6.*** *Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of OA No. 774 of 1994 is condoned and the said application is allowed. The appellants would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated 16-12-1993 in OAs Nos. 395-403 of 1993 and connected matters. No order as to costs.*

24. Condonation of delay should go along with the spirit and intent of the policy on a particular matter. Where the object of compassionate appointment is to mitigate the immediate financial crisis that the family is encountering due to the untimely and unfortunate demise of the bread winner, application for such appointment filed much after the rejection by the Department of the request for such appointment is hit by the bar of limitation. **See *Dhalla Ram v. Union of India, (1997) 11 SCC 201*, wherein the Apex Court has held:**

> ***1.*** *This special leave petition arises from the order of the Central Administrative Tribunal, made on 12-7-1993 dismissing the petitioner's application for appointment on compassionate grounds. The father of the petitioner died on 13-12-1965 on which date the petitioner was below 6 years. He attained majority, on his own statement, on 12-7-1977, when he completed 18 years of age. He made an application on 15-7-1987 for his employment on compassionate grounds. The very object of making appointment on compassionate grounds is to rehabilitate the family in distress of the deceased employee who dies in harness. There should be no difficulty in considering an eligible candidate for providing immediate sustenance to the members of the deceased employee. He had applied on 15-7-1987 and the application was rejected on 14-7-1988. He filed the OA on 12-7-1993.* ***In view of the long delay, after the refusal by the Government, in filing the application, the same cannot be entertained.*** *The appointment on compassionate grounds is not a method of recruitment but is a facility to provide for*

immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution.

***2.** Under these circumstances, we do not find any ground warranting interference with the order passed by the Tribunal dismissing the application on 12-7-1993.*

25. When reasonable cause is shown for delay in filing the application before the Tribunal, the Tribunal should entertain the O.A. if on exclusion of the period for which the delay has been explained, the application filed is within the prescribed time. In the case ***of Baliram Prasad v. Union of India, (1997) 2 SCC 292*** the Apex court has held:

***5.** In our view the Tribunal was patently in error in dismissing the application of the appellant both on the ground of limitation as well as on merits. So far as the question of limitation is concerned it is true that the appointment of Respondent 7 was effected by the authorities on 16-7-1992 and consequently the application could have been filed before the Tribunal within one year from that date. But the appellant had already produced before the Tribunal material to indicate that he was not well from 20-8-1993 and he had recovered only by the end of December 1993. The Tribunal has noted that there was no explanation of delay from January 1993 to August 1993. We fail to appreciate how this aspect was at all relevant. The learned counsel for Respondent 7 also rightly submitted that what was to be explained by the appellant was the delay from August 1993 to January 1994. If that is so the appellant had already produced the Medical Certificate showing his illness from 20-8-1993 to 22-12-1993. If this period is excluded then the delay in filing the application remains minimal which deserves to be condoned in the interest of justice. We, therefore, hold that the appellant had made out sufficient cause for condoning the delay in filing the application and the said delay deserves to be condoned. That takes us to the merits of the controversy.*

26. At this juncture, the legal proposition emphasized by the Constitution Bench in the judgment

of ***S.S. Rathore v. State of M.P., (1989) 4 SCC 582*** is appropriate to be referred to. The question that was considered in that case related to two aspects:-

(a) for the purpose of reckoning the limitation period, when is a cause of action treated to have arisen.

(b) whether the total period of six months covered under sub-section (3) had to be excluded in filing the petition in the suit, when it was transferred to the Tribunal under the Administrative Tribunal Order.

27. As regards the first question, the Apex Court has held in para 18 to 20 as under:-

> ***"18.*** *We are satisfied that to meet the situation as has arisen here, it would be appropriate to hold that the cause of action first arises when the remedies available to the public servant under the relevant Service Rules as to redressal are disposed of.*
>
> ***19.*** *The question for consideration is whether it should be disposal of one appeal or the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of sub-sections (2) and (3) of Section 20 of the Administrative Tribunals Act. There, it has been laid down:*
>
> *"20.(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—*
>
> *(a) if a final order has been made by the government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or*
>
> *(b) where no final order has been made by the government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.*
>
> *(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."*
>
> ***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 provided by law are not governed by this principle."

Yet another aspect closely knit with this question adverted to by the Apex Court is that when no final order (in appeal or representation provided by law) is disposed of, the limitation would commence on the expiry of six months from the date when the appeal was filed or representation made. Thus, if a representation made has been decided, then, commencement of limitation period would be from the date of issue of such an order in reply to the representation. However, if after rejection of such representation, another representation is made and the same is also rejected on the basis of the earlier representation, the later representation is to be termed as "repeated unsuccessful representation" and such repeated unsuccessful representations cannot elongate the limitation period. If on the basis of such subsequent representation the matter has been reconsidered by the competent authority, then limitation would start from the date of the decision after reconsideration on such subsequent representation.

As regards (b) above, the Apex Court has held as under:-

***21.** It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court's jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.*

28. The above dictum has been referred to in a subsequent case of ***State of Karnataka v. S.M. Kotrayya, (1996) 6 SCC 267*** wherein the Apex Court has stated:

***"8.** The decision of the Constitution Bench in **S.S. Rathore case has** no application to the facts in this case. Therein, this Court was concerned with the question whether the total period of six months covered under sub-section (3) had to be excluded in filing the petition in the suit, when it was transferred to the Tribunal under the Administrative Tribunal Order. In that behalf, the Constitution Bench held that a suit under a civil court's jurisdiction is governed by Article 58 of the Limitation Act, 1963 and the claims for redressal of the grievances are governed by Article 21 of the Act. The question whether the Tribunal has power to condone the delay after the expiry of the period prescribed in sub-sections (1) and (2) of Section 21, did not arise for consideration in that case."*

29. Where the cause of action is recurring, in so far as relief is concerned, the same may have to be considered in two ways - (a) That part to which limitation applies and another to which limitation does not apply. This would be clear from the following decisions of the Apex Court:-

(a) *M.R. Gupta v. Union of India, (1995) 5 SCC 628*, at page 630 :

> **2.** *The only question for decision is: Whether the impugned judgment of the Tribunal dismissing as time barred the application made by the appellant for proper fixation of his pay is contrary to law? Only a few facts are material for deciding this point.*
>
> **3.** *The appellant joined the service of the State of Punjab as Demonstrator in the Government Polytechnic in 1967. Thereafter, he joined service in the Railways in 1978. The appellant claimed that the fixation of his pay on his joining service in the Railways was incorrect and that he was entitled to fixation of his pay after adding one increment to the pay which he would have drawn on 1-8-1978 in accordance with Rule No. 2018 (N.R.S.N. 6447) equivalent to Fundamental Rule 22-C. The representation of the appellant to this effect was rejected before coming into force of the Administrative Tribunals Act, 1985. The appellant then filed an application on 4-9-1989 before the Tribunal praying inter alia for proper fixation of his initial pay with effect from 1-8-1978 and certain consequential benefits. The application was contested by the respondents on the ground that it was time barred since the cause of action had arisen at the time of the initial fixation of his pay in 1978 or latest on rejection of his representation before coming into force of the Administrative Tribunals Act, 1985. The subsequent representations made by the appellant for proper fixation of his pay were alleged to be immaterial for this purpose.*
>
> **4.** *The Tribunal has upheld the respondents' objection based on the ground of limitation. It has been held that the appellant had been expressly told by the order dated 12-8-1985 and by another letter dated 7-3-1987 that his pay had been correctly fixed so that he should have assailed that order at that time "which was one time action". The Tribunal held that the raising of this matter after lapse of 11 years since the initial pay fixation in 1978 was hopelessly barred by time. Accordingly, the application was dismissed as time barred without going into the merits of the appellant's claim for proper pay fixation.*
>
> **5.** *Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not*

computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. *The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao v. Mattapalli Raju[1]).*

7. *Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S. Rathore v. State of M.P.[2] That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.*

8. *For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs.*

† From the Judgment and Order dated 22-5-1992 of the Delhi High Court in O.A. No. 1809 of 1989

1 AIR 1950 FC 1 : 1949 FCR 484 : 50 Bom LR 181 : (1950) 1 MLJ 752

2 (1989) 4 SCC 582 : 1990 SCC (L&S) 50

(b) ***Jai Dev Gupta v. State of H.P., (1997) 11 SCC 13*, at page 14 :**

The appellant approached the Central Administrative Tribunal for the relief that he is entitled to the pay scale of Lecturer in Commercial Arts though he was appointed to the post of "Studio Artist". In addition to that he claimed the difference in the salary from the year 1971. He approached the Tribunal for this relief in May 1989. The Tribunal accepted the claim of the appellant that he should be paid the salary of Lecturer in Commercial Arts though he was appointed to the post of "Studio Artist" in view of the fact that he was performing the duties of Lecturer in Commercial Arts. However, the Tribunal granted the relief of difference in back wages from May 1988 only on the ground that under Section 21 of the Administrative Tribunals Act the period of one year is prescribed for redressal of grievances. Against the decision of the Tribunal that the appellant is entitled to be paid the salary of Lecturer in Commercial Arts though he was appointed as "Studio Artist" the respondents have not filed any appeal. The appellant has preferred this appeal claiming the difference in back wages from the date of his posting as Lecturer in Commercial Arts.

2. *Learned counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was making a number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May 1989. We do not think that such an excuse can be advanced to claim the difference in back wages from the year 1971. In Administrator of Union Territory of Daman and Diu v. R.D. Valand 1995 Supp (4) SCC 593 this Court while setting aside an order of the Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned counsel for the appellant that the difference in back wages should be paid right from the year 1971. At the same time we do not think that the Tribunal was right in invoking Section 21 of the Administrative Tribunals Act for restricting the difference in back wages by one year.*

3. *In the facts and circumstances of the case, we hold that the appellant is entitled to get the difference in back wages from May 1986. The appeal is disposed of accordingly with no order as to costs.*

Thus if the matter relates to fixation of pay (directly and proximately and not remotely or as a consequence of some other relief, such as fixation of seniority), the cause of action is continuous and in so far as the arrears of pay and allowances for the past period is concerned, the same shall be restricted to a period of three years anterior to the date of filing, while

notional fixation would be from the day the fixation of pay was made wrongly.

***Central Hospital v. Savita S. Bodke, 1995 Supp (3) SCC 439*, at page 440 :**

The Tribunal notwithstanding the long lapse of time of almost a decade and notwithstanding the fact that her services were terminated in 1982 as she was found to be ineligible for want of qualification and further notwithstanding the fact that she had accepted appointment as ANM quashed the order of termination and granted her wages as if she was a Staff Nurse. We fail to understand how the Tribunal could have exercised jurisdiction in regard to an event which occurred long before it came into existence and how it could direct payment of salary of Staff Nurse when she was not qualified to be appointed to the post. The duties of the Staff Nurse and ANM may overlap and in the absence of the former the latter may be required to carry out some of those functions but that would not justify payment of salary of the former. We, therefore, find it difficult to sustain the order of the Tribunal.

***Administrator of Union Territory of Daman and Diu v. R.D. Valand, 1995 Supp (4) SCC 593*, at page 593 :**

4. *We are of the view that the Tribunal was not justified in interfering with the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28-9-1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8-10-1986. Thereafter for four years the respondent did not approach any court and finally he filed the present application before the Tribunal in March 1990. In the facts and circumstances of this case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way.*

5. *We allow the appeals, set aside the judgment of the Tribunal and dismiss the application of the respondent before the Tribunal. The respondent has been paid by the Administration the arrears which became due to him as a result of the Tribunal's judgment. In the facts and circumstances of this case, we direct that the said amount shall not be recovered from him. No costs.*

30. It would be appropriate to refer to the decision of the Apex Court in the case of ***Bhoop Singh v. Union of India, (1992) 3 SCC 136*, at page 139.** In that case, mass termination of constables of the Delhi Police took place in 1967 against which some of the terminated employees approached the

Hon'ble Delhi High Court in 1969-70 and their case was decided by the High Court in 1975, directing reinstatement and the said judgment was complied with. On the basis of the said judgment, certain other dismissed constables approached the High Court in 1978 which too were allowed rejecting the objection raised on the ground of delay and latches. Again, some other similarly situated persons **(Dharampal and others)** approached the High Court by way of a writ petition, which, however, was transferred to the Tribunal after the constitution of the Central Administrative Tribunal. The Tribunal on the basis of a judgment of the Hon'ble Court pronounced in respect of the writ petitions filed in 1978 allowed the application against which the Delhi Administration filed an appeal before the Apex Court which, however, was dismissed (See 1990) 4 SCC 13). It is thereafter that the petitioner Bhoop Singh, on the basis of the judgment of the Tribunal approached the Tribunal in OA NO. 753/89, which however, was dismissed. Aggrieved by the said decision of the Tribunal, the petitioner approached the Apex Court and the Hon'ble Supreme Court held as under:-

> ***2.*** *Petitioner, Bhoop Singh, claiming to be a similarly dismissed police constable filed O.A. No. 753 of 1989 in the Central Administrative Tribunal praying for reinstatement in service and all consequential benefits on the ground that his case and claim is similar to that of the police constables, who had succeeded in the earlier rounds of litigation. The Tribunal has rejected the petitioner's application on the ground that it is highly belated and there is no cogent explanation for the inordinate delay of twenty-two years in filing the application on March 13, 1989 after termination of the petitioner's service in 1967.*

.....
.....

8. *There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe Dharampal (1990) 4 SCC 13 in the manner suggested by the petitioner. Article 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner. We are further of the view that these circumstances also justify refusal of the relief claimed under Article 136 of the Constitution.*

31. The above decisions would go to show that if the Court has passed certain orders others similarly placed, have to approach the Court immediately on their coming to know of the decision so that they would be extended the same benefit as the similarly situated employees, who were granted the relief by the Court. But, if an individual after a very long time (as is the case of Bhoop Singh) wakes up and asks for the same treatment, limitation would stare at him to disable him from being granted the same relief. Bhoop Singh did not approach the Court immediately the first set of people got the relief. When, on the basis of the First set, second set also got the benefit, on seeing the second set of people getting the relief, Bhoop Singh woke up and approached for similar relief, which the Courts

refused on account of inordinate delay. In fact, if a decision of the Court is a judgment in rem (i.e. it deals with a legal issue and decision on the same is applied to the litigants concerned) then as per the Apex Court's decision in the case of ***Amrit Lal Berry v. CCE, (1975) 4 SCC 714***, the authorities should of their own extend such benefits to the similarly situated persons, without forcing such similarly situated employees to knock at the doors of the Tribunal/court. The Apex Court has in that case held as under:-

> *We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.*

32. The V Central Pay Commission has emphasized the above aspect in para 126.5 of the Report, and the same is reproduced below:

> *"We have observed that frequently, in cases of service litigants involving many similarly placed employees, the benefit of judgments is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of the Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others vs UOI and others (OA 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in*

numerous other judgments like G.C. Ghosh vs UOI (1992) 19 ATC 94 (SC) dated 20-07-1988; K.I. Shepherd vs UOI (JT 1987 (3) 600); Abid Hussain v s UOI (JT 1987 (1) SC 147) etc., Accordingly we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of government employees is concerned and not in matters relating to a specific grievance or anomaly of an individual employee."

33. The applicant had stated in para 3 of the OA that the application has been filed within the limitation period. He has assailed the order of rejection of his representation, which was issued by the respondents in the wake of a direction of this Tribunal vide order dated 25-4-03 in 706/98.

34. Now the above fact has to be telescoped upon the decision on limitation. Admittedly, the applicant was medically examined and were found fit during 1992 (though the Railways claim that it was due to the pressure of the Union that medical examination took place, that the medical exam took place and the applicant was found fit is not denied). Earlier, certain applicants, similarly situated as the applicants to this OA approached the Tribunal in OA No. 1550/92. In that case the Tribunal passed its order on 10-12-1996 directing the respondents for re-screening of the applicants. Those applicants were re-engaged by the respondents.

When the applicant requested for the same benefit, no action was taken by the respondents whereby he had approached the Tribunal in 1998 itself and their OA No. 706/98 came up for consideration in 2003. The Tribunal had directed the respondents to dispose of the representation. It is in pursuance of this order that the respondents had rejected the claim of the applicants and this OA came to be filed. Now, the situation of the applicant in staking his claim on the strength of the decision in Prahlad and others (OA No. 1550/92) is analogous to that of Dharampal in the case of Bhoop Singh (supra). At the cost of repetition, it is to be stated that when some of the dismissed constables approached the Hon'ble Delhi High Court in 1975 and obtained an order in their favour, Dharampal a similarly situated constable, had, on the strength of the said order, approached the High Court soon after the declaration of judgment by the Hon'ble High Court and the case having been transferred to the Tribunal, the Tribunal had allowed the claim of the said Dharampal. And the Apex Court endorsed the decision of the Tribunal in the case of Dharampal. In the instant case as well, Prahlad's decision was relied upon by the applicants herein and thus, just as the Tribunal did not reject the claim of Dharampal on limitation, the same treatment, applicants in this case are entitled to. Hence, so far as limitation is concerned, the objection of the respondents has to be rejected.

Now on merits. There is no dispute that the applicants were earlier engaged by the Railways on casual basis and it is also admitted that if casual labourers had put in 120 days of service, they would be eligible for temporary status, followed by screening and subject to being found fit, both in academic qualification and in age, they would be considered for absorption against the Group D vacancies. Now, the dispute is about the total number of days of engagement of the applicant prior to disengagement. The applicant claims that he had put in 256 days, while the contention of the respondents is that he had put in only 93 days, which is much less than the minimum prescribed 120 days. The applicant who had averred in para 4.2 of the OA as to the total number of days of his engagement, had, vide Annexure 4 letter dated 01-07-2003, substantiated his averment which was certified by the Section Engineer, who had stated that on the basis of the thumb impression in the records maintained in the office, the applicant had worked from 23-9-1985 to 09-4-1986 (200 days) and thereafter, from 24-4-86 to 18-06-1986 (56 days). Per contra, the respondents had contended in para 10 of their counter that the applicant no doubt was engaged on 23-09-1985 and later again re-engaged on 24-04-1986 but his initial engagement was only upto 03-11-1985 and his second engagement was upto 18-06-1986. The learned counsel for the applicant argued that between the original register containing the

thumb impression, duly certified by a competent authority on the one hand and an extract taken out from the original at a very later date, obviously, the original would have more authenticity. I am inclined to accept the same. Again, the respondents have admitted that the project was completed on 24-06-1986 and this also probabilities the contention of the applicant that on the second engagement he had worked upto 24-06-1986, for when the project was to complete shortly, in all expectation, the casual labour would not have been disengaged just eight days in advance. Thus, taking into account the register containing the thumb impression, as certified by the competent authority, it could be safely held that the applicant did work for a period of 256 days. Even assuming that the applicant put in only less than 120 days of work, instances have been shown by the applicant to the effect that those who had put in much less number of days of work than the applicant had been engaged. Such persons were either the applicants in the earlier OA (along with Shri Prahlad) or those who had not moved the Tribunal. Para 4.10 and 4.19 of the OA refer. In reply, there has been no specific denial, rather, the tenor of the reply shows that the averment of the applicant has been only accepted. If so, whatever good grounds were there in regularizing the services of such individuals, the same are equally available in the case of the applicant. Hence, it is held that the applicant did work for 256 days.

The applicant has relied upon the judgment in the case of K.C. Sharma, to contend that as in that case the Constitution Bench had held that similarly situated individuals should be given the benefit of any judgment of the court and argued that his case being similar to the case of Prahlad and others, the benefit available to the applicants therein should be available to the applicant as well. Apart from the above case, as stated earlier, the case of A.L. Berry, K.I. Shepherd (supra) and the recommendations of the V Pay Commission also support the case of the applicant.

35. In the result, the OA is allowed. Order dated 02-09-2003 is hereby quashed and set aside. It is declared that the applicant is entitled to be reinstated and regularized as done in the case of Prahlad and others in OA No. 1550/92. On regularization, the applicant shall be fixed his pay on **notional basis** and increment in pay be added to the applicant and his pay on the date of his joining and regularization shall be fixed accordingly. No arrears are payable to the applicant. Other benefit of seniority and further promotion if any, would however, accrue.

36. The above order shall be complied with, within a period of six months from the date of communication of this order.

37. As this is the second round of litigation, the applicant is entitled to cost of this OA, which is quantified at Rs. 2,500/- and the same shall be paid within the period stipulated above.

MEMBER-J

GIRISH/-