

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. C.V.Sankar, Member (A)**

OA 420 of 2019

Siba Chanran Swain, aged about 50 years, S/o Madhaba Nanda Swain, now residing at – Ordnance Factory Badmal, Quarter No. 23252/4, type-II, 4th Phase, PO-OF Badmal, District-Bolangir, Pin-767070, Odisha, presently working as CM/T (chemical).

OA 127 of 2020

MA 287 of 2020

Anil Kumar Dash, aged about 46 years, S/o Sachi Bhusan Dash, presently working as DBW (MC) under General Manager, Ordnance Factory, At/PO-Badmal, Dist.-Bolangir – 767770, residing At/PO- D.F.Badmal, Dist-Bolangir. (Gr. C).

OA 128 of 2020

MA 286 of 2020

Tebhantara Bhoi, aged about 48 years, S/o Muralidhar Bhoi, presently working as DBW (HS-II) under General Manager, Ordnance Factory, At/PO-Badmal, Dist-Bolangir-767770, residing At/PO-D.F.Badmal, Qtr. No. 23191/ 3rd Phase (Type-II) Dist.-Bolangir (Gr.-C)

OA 657 of 2019

Umesh Chandra Maharaj, aged about 43 years, S/o Sri Nrusingha Ch. Maharaj, now residing at Type-II, Vth Phase, OFBL Estate, At/PO-Badmal, Dist-Bolangir, presently working as Master Craftsman, OFBL, Badmal.

.....Respondents.

VERSUS

1. Union of India, represented through the Secretary, Ministry of Defence, Defence Head Quarters, New Delhi, Pin-110011.
2. The Director General, Ordnance Factory Board, 10-A Saheed Khudiram Bose Road, Kolkata-1.
3. The General Manager, Ordnance Factory, At/PO-Badmal, Dist-Bolangir, Pin-767770.
4. The Joint General Manager (Admn), Ordnance Factory, At/PO-Badmal, Dist-Bolangir, Pin-767770.

Respondents No. 1, 2 & 3 are same in all the OAs.

Resp. No. 4 in OA 657/2019

Sri Sanjib Kumar Sahu, Chargeman/T, presently in M.M.Section, Ordnance Factory, Badmal, Bolangir-767070.

For the applicants : Mr.S.K.Baral, counsel (OA 420/2019)
Mr.D.K.Mohanty, counsel (OA 127 & 128 of 2020)
Mr.S.K.Ojha, counsel (OA 657/2019)

For the respondents: Mr.S.Behera, counsel (OA 420/2019, OA 127/2020 and OA 657/2019)
Mr.S.K.Ojha, counsel (intervener in OA 420/2019)
Mr.M.R.Mohanty, counsel (OA 128/2020)

Heard & reserved on : 21.1.2021 Order on : 19.04.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

1. O.A.No.420 of 2019

1.1. The case of the Applicant, in nutshell, is that Ordnance Factory, Badmal issued notification under Annexure-A/1 dated 21/04/2010 for filling up of vacancies of Charge man/ Tech&Non-tech (Stores & OTS) in terms of SRO-13E dated 04.05.1989/SRRO-191 dated 28.11.1994/SRO 66 dated 27.5.2003 through Limited Departmental Competitive Examination for 2010-11 as under:

- (i) Mechanical :02 (01 UR & 01 SC)
- (ii) Civil :02 (02 UR)
- (iii) Chemical :02 (01 UR & 01 SC)

1.2. Applicant was one of the candidates in the said selection test. Selection was conducted by the Respondents in accordance with Rules. Final merit list was published by the Respondents under Annexure-A/2 dated 12.10.2010 in which the name of the Applicant had appeared at Sl.No.7. But the Applicant could not be accommodated/promoted. Meanwhile, Respondents conducted similar Limited Examination Competitive Examination 2016-2017 and Applicant having been selected was promoted to the post of Charge

man/T(Chemical) on 28.12.2018. Much thereafter, the Applicant submitted representation nude Annexure-A/5 dated 11/02/2019 praying for his promotion to the post of CM//T (Chemical) against the vacancies of LDCE 2010-2011. Alleging non consideration of his representation, he has filed this Original Application with prayer "*to direct the Respondent No.3 to consider his representation under Annexure-A/5 and effect his promotion to the post of CM/T (Chemical) from LDCE panel of 2010*".

1.3. Respondents have filed their counter, inter alia, objecting to the very maintainability of this OA on the ground of non availing of departmental remedies before approaching this Bench, delay & laches and nonjoinder of party. In so far as merit is concerned, it has been stated that in the case in hand since vacancies were two of which UR-01 and SC01 for CM/Chemical thorough LDCE and the same have already been filled up the applicant cannot claim for his promotion taking into the anticipated vacancies occurred subsequently. Since as on 31.03.2011 only two vacancies were calculated on LDCE quota for 2010-2011 in the trade of Charge man/Chemical two persons were promoted. As the name of the applicant was placed at Sl.No.7 he could not be promoted against the said vacancy. Accordingly, Respondents have prayed for dismissal of this O.A.

1.4. Applicant has filed rejoinder. In so far as the objection of Respondents that the applicant has approached this Bench without availing of the departmental remedy is concerned, it has been stated that the Applicant submitted representation under Annexure-A/5 and as no consideration was given he has approached this Bench seeking direction to the Respondent No.3 to consider his representation. Hence objection in this respect is not acceptable in the eyes of law. In so far as the objection of delay and laches made by the

Respondents is concerned, it has been stated that there is no delay as he met with an accident for which he could not take up his grievance at the right time and with regard to the objection of non-joinder of party is concerned it has been stated that the applicant has arraigned the authority/person as party in accordance with law. Thus according to the Applicant none of the objections raised by the Respondents have any legs to stand for dispensation of justice in his favour. In regard to merit, it has been stated that as his case is similar to the cases of Manoj Kumar Acharya and Sanjib Kumar Sahu they having been promoted against as per the merit list of LECE-2010-2011 the applicant is also entitled to such promotion.

2. O.A.No.657 of 2019:

2.1. Instead of great details, it would suffice to state that in pursuance of notification under Annexure-A/1 dated 21/04/2010, applicant had also participated in the process of selection for promotion to Chargeman (Chemical) under LDCE-2010-2011 and his name was appeared at Sl.No. 4 in the merit list published vide Annexure-A/2 dated 12.10.2010 but could not be promoted since as per notification there were only 02 (01 UR & 01 SC) vacancies in the grade of Chargeman (Chemical) . One similarly placed employee namely Shri Manoj Kumar Acharya submitted representation dated 29.10.2010 claiming promotion on various grounds which was rejected and reason of rejected was communicated to Shri Acharya vide letter under Annexure-A/6 dated 29.04.2011. As against the said order of rejection, applicant along with others including, Shri Manoj Kumar Acharya filed OA No. 302 of 2011 before this Bench which was disposed of on 17th October, 2011. In compliance of the order of this Bench, the competent authority reconsidered the matter and rejected their

grievance vide order under Annexure-A/8 dated 18.01.2012. Applicant satisfied with the order of rejection and kept silence over the years whereas Shri Manoj Kumar Acharya again filed OA No. 186 of 2012 before this Bench challenging the order of rejection dated 18.01.2012. The said OA No. 186 of 2012 was disposed of by this Bench on 2nd February, 2016. Again the authority concerned considered the grievance of Shri Manoj Kumar Acharya but rejected the same vide order under Annexure-A/10 dated 20.07.2016. He (Shri Manoj Kumar Acharya) again challenged the same before this Bench in OA No. 599 of 2016 which was disposed of on 15th January, 2018. Respondents challenged the said order of this Bench dated 15.1.2018 before the Hon'ble High Court of Orissa in W.P (C) No. 6137 of 2018 was dismissed on 10.05.2018 (Annexure-A/12) and in compliance of the order, Shri Acharya was promoted to the post of Chargeman (Tech) in the Chemical Stream based on LDCE 2010 vide order under Annexure-A/13 dated 12.1.2019. The present applicant did not make any effort and kept silence after the order of rejection under Annexure-A/8 dated 18.01.2012. It was only after the order of promotion of Shri Acharya under Annexure-A/13 dated 12.1.2019 he submitted representation under Annexure-A/14 dated 23.8.2014 claiming his promotion based on the LDCE 2010 and kept quiet in the matter and after four years submitted another representation under Annexure-A/15 dated 24.1.2018 reiterating his prayer made in earlier representation. Another employee namely Sanjib Kumar Sahu who had filed OA No. 399 of 2012 before this Bench challenged the order of rejection Annexure-A/8 dated 18.01.2012 which was disposed of on 19.12.2018 got promoted vide Annexure-A/18 dated 11.02.2019. Thereafter, the present Applicant approached this Bench in OA No. 56 of 2019 which was disposed of on 23.01.2019. Respondent-Department considered his representation but

rejected vide order under Annexure-A/17 dated 2nd September, 2019. Being aggrieved by the said order of rejection, the applicant has filed the instant OA seeking the relief as under:

- “(i) To quash the order dated 9th September, 2019 (Annexure-A/17) holding the same is against the judicial pronouncements made in various similar proceedings;
- (ii) To direct the Respondent No.2 to extend the benefit of promotion to the applicant as has been extended to Shri Manoj Kumar Acharya & Shri Sanjib Kumar Sahoo vide office order dated 12.01.2019 and 11.02.2019 respectively;
- (iv) To direct the Respondents to maintain parity and extend the benefit of order dated 15.01.2018 passed in OA No. 599/2016;
- (v) To declare that the Speaking order dated 18.01.2012 (Annex.A/8) is honest in the eye of law in view of orders passed in OA No. 186/20121 and OA No. 599/2016;
- (vi) To extend all consequential benefits with effect from the date when other employees promoted;
- (vii) To pass any other order/orders as deemed fit and proper in the circumstances of the case and for ends of justice.”

2.2. The official Respondents have filed counter and additional counter opposing the prayer of the Applicant both on the ground of limitation so also merit. The theme of opposition in the counter is that an employee cannot claim promotion or appointment as a matter of right merely because he was empanelled in the merit list and the Respondent- Department are not under obligation to fill up more than the vacancies advertised. Thus, the Applicant is not entitled to any relief claimed in this O.A. Applicant has filed rejoinder, additional affidavit and date chart in support of the stand taken and relief sought in the O.A.

3. O.A.No.127/2020 & OA N o. 128/2020:

3.1. The case of the Applicant, in brief, is that notification under Annexure-A/2 dated 23/08/2011 was issued by Respondent-Department for holding Limited Departmental Competitive Examination 2011-2012 for filling up of vacancies as under:

- a) Mechanical :08 (06 UR, 01 SC & 01 ST)
- b) Electrical :04 (03 UR, 01 SC)
- c) Chemical :06 (05 UR & 01 ST)

3.2. Respondents conducted the selection but could not declare the result. However, one of the candidates approached before this Bench in OA No. 94/2019 which was disposed of on 08.03.2019 and in compliance of the order of this Bench, Respondents published the merit list under Annexure-A/6 dated 11/02/2020 showing the name of Applicant at Sl.No.2 (Gen.) with footnote that *“the operation of the select list in respect of CM/T(Chem.) will be subject to outcome of various cases presently subjudice before Hon'ble CAT, Cuttack in the matter of LDCE 2010-2011 & 2011-2012”*. It is the case of the Applicant that since representation dated 13.02.2020 under Annexure-A/7 for giving effect to the merit list did not yield any result he has approached before this Bench in the instant OA. The prayer of the Applicants in both the OAs is that to direct the Respondent No.2&3 to promote them to the post of Chargeman (Chemical) as per the merit list retrospectively from the date of vacancy with all consequential benefits.

3.3. A short reply has been filed by the Respondents in which it has been stated that 02 posts (UR-01 & SC-01) of charge man /Chemical were advertised to be filled up through LDCE 2010-2011 and the same were filled up. In the meanwhile in compliance of the order of this Bench, Shri Manoj Kumar Acharya and Shri Sanjib Kumar Sahu were promoted to the post of Chargeman

(Chemical) out of the select list of LDCE-2010-2011. Thus instead of 06, only 04 (UR-03 & ST-01) vacancies in the grade of Charge man (Chemical) remained to be filled up out of the select list of LDC 2011-2012 but due to pendency of various litigations the select list of LDCE -2011-2012 have not been given effect to. Intervention petition filed have also been taken into consideration.

4. Learned Counsel for the Applicant in OA No.420 of 2019 has submitted that applicant's case stood in similar footing like that of Shri M.K.Achardya and Shri Sanjib Kumar Sahu and they having been promoted against LDCE 2010-2011 in compliance of the order of this Bench, he should have been promoted. He submitted representation claiming the benefit under Annexure-A/5 dated 1.02.2019 and since no action was taken by the authority concerned, he has approached this Bench as denial of the similar benefit amounts to discrimination in violation of the mandate enshrined in Article 14 and 16 of the Constitution. This was strongly opposed by the leaned counsel appearing for the Respondents mainly thrusting upon the point of delay and laches so also nonjoinder/misjoinder of party approaching the Tribunal without making any efforts before the authority at the first instance. Learned Counsel appearing for the Intervener has also advanced his argument on line of Respondents' Counsel.

5. Similarly, Learned Counsel for the Applicant in OA No.657 of 2019 has submitted that name of Shri Manoj Kumar Acharya was placed below the name of the Applicant in the select list of LDCE-2010. Shri Manoj Kumar Acharya having been promoted in compliance of the order of this Bench, applicant being senior ought to have been promoted. He further contended that the Respondents opposed the prayer of applicant on the ground that since SLP filed before the Hon'ble Supreme Court against the order dated 10.05.2018 in

WP (C) No. 6137 of 2018 has been dismissed in the meanwhile and, therefore, the applicant being senior to Mr.Acharya is entitled to be promoted. Learned Counsel for the Applicant has also placed reliance on the decision of Hon'ble Apex Court to the extent that benefit of a decision should also be extended to similarly situated employees. On the above ground, leaned counsel for the applicant has prayed for the relief claimed in this O.A. Besides on merit on the ground delay and laches the learned counsel appearing for the Respondents has strongly opposed the prayer of the Applicant and has prayed that this OA being devoid of any merit is liable to be dismissed.

6. Learned counsel appearing for the Applicants in OA Nos. 127/2020 & 128/2020 has submitted that both the Applicants after being selected have been deprived of their legitimate right for promotion due to the pendency of OA Nos. 420/2019 and 657 of 2019. The applicant in OA OA No. 420 of 2019 has already been promoted and Applicant in OA No. 657 of 2019 has no right to be promoted merely because others who were approached this Bench at the right time and got promoted. Learned Counsel appearing for the Applicants in both the OAs also argued on the line of arguments advanced by learned counsel for Respondents in other two OAs and has prayed for dismissal of OA Nos. 420/2019 and 657 of 2019 and grant of relief claimed in OA Nos. 127/2020 & 128/2020 .

7. We have considered the rival submissions of the respective parties and perused the records.

8. We find that merit list was for LDCE 2010-2011 was published on 12.10.2010 wherein name of applicant in OA No. 420 of 2019 was placed at Sl.No.7 and, therefore, he could not be appointed against 02 vacancies for which selection was conducted. Meanwhile, Respondents conducted similar Limited

Examination Competitive Examination 2016-2017 and Applicant having been selected was promoted to the post of Charge man/T(Chemical) on 28.12.2018. It was only on 11.2.2019 applicant submitted representation for the first time claiming that he should have been promoted as per the merit list published for LDCE 2010-2011 and filed this OA praying inter alia “*to direct the Respondent No.3 to consider his representation under Annexure-A/5 and effect his promotion to the post of CM/T (Chemical) from LDCE panel of 2010*”. After filing of counter, in our considered opinion, the prayer made in this OA became redundant because after counter direction for disposal of representation would be meaningless. The Applicant has also not filed any application seeking condonation of delay and has filed written note in which it has been stated that he has met with an accident for which he has not approached at the right time. This contention in so far as delay is concerned is not acceptable for the simple reason that it is not his case that he remained absent from office with effect starting from publication of result till submission of representation. It is also found that the applicant has not made the persons who will be affected in the event his prayer in the OA is allowed.

9. Similarly, in OA No. 657 of 2019 we find in the select list dated 21.4.2010 the name of the applicant was placed at Sl.No. 4 but could not be promoted since as per notification there were only 02 (01 UR & 01 SC) vacancies in the grade of Chargeman (Chemical). One similarly placed employee namely Shri Manoj Kumar Acharya submitted representation dated 29.10.2010 claiming promotion on various grounds which was rejected and reason of rejected was communicated to Shri Acharya vide letter under Annexure-A/6 dated 29.04.2011. As against the said order of rejection, Applicant along with others including, Shri Manoj Kumar Acharya filed OA

No. 302 of 2011 before this Bench which was disposed of on 17th October, 2011. In compliance of the order of this Bench, the competent authority reconsidered the matter and rejected their grievance vide order under Annexure-A/8 dated 18.01.2012. Applicant satisfied with the order of rejection and kept silence over the years. He submitted representation under Annexure-A/14 dated 23.8.2014 claiming his promotion based on the LDCE 2010 and kept quiet in the matter and after four years submitted another representation under Annexure-A/15 dated 24.1.2018 reiterating his prayer made in earlier representation that too when other empanelled candidate was promoted in compliance of the order of this Bench. The present Applicant approached this Bench in OA No. 56 of 2019 which was disposed of on 23.01.2019. Respondent-Department considered his representation but rejected vide order under Annexure-A/17 dated 2nd September, 2019. Being aggrieved by the said order of rejection, the applicant has filed the instant OA seeking the relief. According to learned counsel for the Applicant since other similarly situated even junior to applicant in select list has been promoted he has a right to be promoted.

10. The Applicants in both the above OAs virtually seek to unsettle an issue which have been settled in the year 2010. No satisfactory explanation is forthcoming for the delay in approaching by both the applicants starting from making representation till filing the O.As. We are reminded by the law laid down by the Hon'ble Apex Court in the case of **State of Uttarakhand and another v. Sri Shiv Charan Singh Bhandari and others**, 2013(6) SLR 629, wherein the Hon'ble the Supreme Court, while considering the issue regarding delay and laches, referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been

decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. An order permitting a junior should normally be challenged within a period of six months or at the most in a year of such promotion and relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Any one who sleeps over his rights is bound to suffer.

11. Again in the case of **Union of India and others v. M. K. Sarkar**, (2010) 2 SCC 59, Hon'ble Apex Court has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

12. From the aforesaid facts and authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating

to a stale claim or dead grievance it does not give rise to a fresh cause of action.

The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In

Karnataka Power Corp. Ltd. through its Chairman & Managing Director v. K. Thangappan and another, (2006) 4 SCC 322, the Hon'ble Apex Court took note of the factual position and laid down that when nearly for two decades the respondent- workmen therein had remained silent mere making of representations could not justify a belated approach.

13. In the case of **Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others**, (2011) 4 SCC 374, a three-Judge Bench of Hon'ble Apex Court reiterated the principle stated in **Jagdish Lal v. State of Haryana**, (1977) 6 SCC 538 and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in **Ghulam Rasool Lone v. State of Jammu and Kashmir and another**, (2009) 15 SCC.

14. In the case of **State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors.**, (2015) 1 SCC 347 after examining a catena of decisions on the question whether similarly situated government employees should be granted the benefit of an order passed by a Court in another case, had examined the issue in the context of discrimination and equal treatment under Article 14 of the Constitution and held that this principle is subject to well- recognised exceptions in the form of laches and delays as well as

acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

15. In the case of **P.S. Sadasivaswamy v. State of T.N.**, (1975) 1 SCC 152, Hon'ble Apex Court has been pleased to hold that 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. In so far as the order of this Tribunal in the case of M.K.Acharya etc is concerned we may record that the said order cannot be treated as precedent as we find that the point of delay and laches was never questioned in the said O.A. On examination of the facts/issued involved in both the OAs with reference to the law laid down by the Hon'ble Apex Court, we are of the view that as the Applicants in OA Nos. 420 of 2019 and OA No. 657 of 2019 did not challenge the action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts they are not entitled to the relief claimed in the OAs. Further, interfering in this matter would tantamount to unsettling a settled matter after long lapse of time. As a consequence,

Respondents are directed to take further course of action in so far as acting upon the select list published for the LDCE 2011-2012 which is the subject matter of OA No. 127 of 2020 and 128 of 2020 and complete the exercise within a period of 30 days from the date of receipt of copy of this order.

17. In the result, OA Nos. 420 of 2019 and 657 of 2019 stand dismissed and OA Nos. 127 of 2020 and OA 128 of 2020 are disposed of with the direction made above. There shall be no order as to costs.

(C.V.SANKAR)
MEMBER (AO)

(SWARUP KUMAR MISHRA)
MEMBER (J)

I.Nath