



**Central Administrative Tribunal  
Principal Bench, New Delhi**

**O.A. No. 861/2021  
M.A. No.2556/2020**

**This the 15<sup>th</sup> day of April, 2021**

(Through Video Conferencing)

**Hon'ble Mr. A.K. Bishnoi, Member (A)  
Hon'ble Mr. Ashish Kalia, Member (J)**

B.S. Jarial (Aged 64 yrs. Gp. B)  
Ex- Dy. Supdt. Gd.-I (Sr. Citizen)  
S/o late Sh. G.S. Jarial  
R/o 43, MBK Apartments, Sector-13, Dwarka  
New Delhi – 110078.

... Applicant

(In person)

## Versus

1. Govt. of NCT of Delhi Through Chief Secretary  
I.P. Estate, New Delhi-110002.
2. The Principal Secretary (Home)  
Govt. of NCT of Delhi  
I.P. Estate, New Delhi – 110002.
3. The Director General of Prisons  
Prisons Headquarters, Tihar  
Near Lajwanti Garden Chowk  
Janak Puri, New Delhi – 110064

## ... Respondents

(through Advocate Ms. Esha Mazumdar)



## ORDER (Oral)

**Hon'ble Mr. Ashish Kalia, Member (J):**

**MA No. 2556/2020**

The aforesaid MA has been filed seeking condonation of delay of 455 days in filing the OA in the interest of justice.

2. The reliefs claimed in the OA are as follows:

- “(i) To direct the respondents to convene review DPC for the year 2002/2003 without loss of any further time for promoting the applicant to the post of Supdt. Jail retrospectively notionally from 03.06.2002 when he became due as per the draft RRs as well as guidelines issued by 5/6<sup>th</sup> CPC/UPSC and available precedents with all consequential benefits. OR Otherwise from 21.05.2003 when DG(Prisons)/Respondent gave officiating status to the applicant as Supdt. Jail of Central Jail No.4 and he continue to work as Supdt. Jails till 22.07.2010 when the applicant was illegally reverted as Dy. Supdt. Gd.I, though vacancies are available of Supdt. Jails.
- (ii) To call files/records regarding amendment of RRs of Supdt. Jail since 1997 when 1<sup>st</sup> undertaking was given in Hon'ble Tribunal till 2015 to prove intentional delay and mala fide aspect in the matter of finalization of RRs.
- (iii) To consider the applicant for further promotion/ up-gradation as DIG(Prisons) and further to the post of Addl.IG(Prisons) as per guidelines issued by 5/6<sup>th</sup> CPC/UPSC (Notionally).
- (iv) To quash and set aside Ann-R-4 of the Compliance Report of the respondents dated 17,May 2016 being wrong and not reasoned and non speaking one in the interest of natural justice.
- (v) To direct the respondents to fix the pay of the applicant notionally w.e.f. 3.6.2002 and further allow notional promotions in the hierarchy and revise and refix the pay and pension in accordance with the notional pay fixation. To pay the arrear of pay and pension including retiral dues including leave encashment etc. with compound interest of 18% till the date payment is released.



3. Brief facts of the case are that the applicant was promoted as Assistant Superintendent on 01.01.1981. Subsequently, he was promoted as Deputy Superintendent Grade-II w.e.f. 01.07.1987 and later on as Deputy Superintendent Grade – I on 03.06.1994. He retired from service on attaining the age of superannuation.

4. The applicant is seeking promotion to the post of Superintendent Jail retrospectively on notional basis from 03.06.2002 when he became eligible for the said post. But the respondents have given him the promotion as Superintendent Jails on 21.05.2003 on *ad hoc* basis, which continued till 22.07.2010 when the applicant was reverted to the post of Deputy Superintendent Grade – I.

5. It is further submitted that the applicant has stagnated for about 22 years on the same post because of non-availability of promotional avenues. He was eligible for promotion on 03.06.2002 as Superintendent Jails and further to the higher posts as per the Recruitment Rules. The applicant has filed CP No. 783/2015 in OA No. 2858/2015, which was disposed of at the admission stage and liberty was given to the applicant to challenge the order passed by the respondents in accordance with law.



This Order was passed by the Tribunal on 18.08.2017 and the applicant has approached this Tribunal in the year 2020. He has also submitted that he underwent heart surgery in the year 2012 and cervical myelopathy in the year 2019. He has further submitted that the cause of action in the present case is a recurring one, in terms of the Orders passed by the Hon'ble Supreme Court in the cases of **M.R. Gupta v. Union of India and Others**, (1995) 5 SCC 628, and in **Union of India and Others v. Tarsem Singh**, (2008) 8 SCC 648 as also the recent decision in a suo-motu case in *WP (C) No. 3/2020* vide Order dated 23.03.2020 extended the limitation till further orders with effect from 15.03.2020.

6. The Tribunal has put a straightforward question to the applicant to explain the delay. But no satisfactory reply was given for condonation of delay.

7. Notices were issued to the respondents on 04.12.2020 and reply thereof is still awaited. Ms. Esha Mazumdar, learned counsel put appearance on behalf of respondents and opposed this Application by stating that this Application is highly belated.



8. After hearing counsels for the parties at length, this Tribunal is of the view that the applicant was given liberty to re-approach this Tribunal in the year of 2017. At best he could have re-approached this Tribunal within one year thereafter. But he has waited so long without disclosing any valid reason for condoning the delay.

9. The Hon'ble Apex Court in the matter of **Chennai Metropolitan Water Supply Sewage Board Vs. T.T. Murali Bapo** (2014) 4 SCC 108 has held as under:

*“Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”*

10. In **D.C.S. Negi vs Union of India and Ors.** decided on 07.03.2011 in **S.L.P. (C) no. 7566/2011 (CC no. 3709/2011)**, the Hon'ble Supreme Court analysed the provisions of section 21 of the Administrative Tribunals Act, 1985, and held as under:



*“A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit on application unless the same is made within the time specified in Clause (a) and (b) of section 21(1) or section 21(2) or an order is passed in term of Sub-section (3) for entertaining the application after the prescribed period. Since section found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under section 21(3).”*

11. In **Lanka Venkateswarlu (D) by LRs vs State of A.P. and Ors** (2011) 4 SCC 363, the Hon’ble Supreme Court held as under:

*“28. .... The concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay.....”*

12. In **Balwant Singh vs Jagdish Singh and Ors** (2010) 8 SCC 685, the Hon’ble Supreme Court of India held on the law of limitation as under:

*“26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his action vigilantly.”*

13. The applicant was promoted to the post of Superintendent Jails on *ad hoc* basis, which gives no legally



vested right for continuation on the said post. The applicant was actually reverted in the year of 2010 for administrative reasons. Even after enactment of new Recruitment Rules, the applicant has not put forth his grievance in a proper prospective, though he was given liberty by the Tribunal to re-approach for his grievance. The relief sought by the applicant in the present OA is that he should be considered for promotion to the post of Superintendent Jails w.e.f. 2002, which is a highly belated. The applicant should have approached much earlier whereas he has approached this Tribunal in the year 2020. Because in the numerous cases, the Hon'ble Apex Court has held that the settled seniority should not be unsettled belatedly.

14. In view of the above facts and circumstances, there is hardly any merit in the Original Application and the same is liable to be dismissed.

15. In view of this, we find no merit in the present MA seeking condonation of delay in filing the OA. The same is accordingly dismissed. As a result, OA No. 861/2021 is also dismissed. No costs.

**(Ashish Kalia)**  
**Member (J)**

/anjali/

**(A. K. Bishnoi)**  
**Member (A)**