

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

Allahabad, this the 21st day of July, 2011

Hon'ble Mr. Sanjeev Kaushik, Member-J

Original Application No.1078 of 2007
(U/s 19 of Administrative Tribunal Act, 1985)

1. Manoj Kumar Sonkar,
S/o Shri Ganga Prasad Sonkar,
R/o 5/3, 190-D, Ardali Bazar, Varanasi.
2. Ashilesh Kumar S/o Sri Ganesh Bind,
R/o 75, P.M.T. Colony, Varanasi.
3. Sunil Kumar Pandey S/o Sri Jamuna Pandey,
Working as Casual Labour in the office of
Commissioner of Income Tax, Varanasi.
4. Satyendra Kumar S/o Sri Shiv Barat Singh,
E/o Kajoori Gola, Varanasi.

..... ***Applicants.***

*By Advocate : Shri B.D. Tiwari
Shri P.N. Pathak*

V E R S U S

1. Union of India through the Secretary, Ministry of Finance, Central Board of Direct Taxes, New Delhi.
2. The Chief Commissioner of Income Tax,
Income Tax Office, Lucknow.
3. The Commissioner of Income Tax, Varanasi.

..... ***Respondents***

By Advocate : Shri S.N. Chatterji

(6)

ORDER

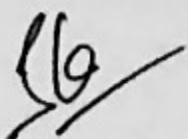
By way of instant OA filed under section 19 of Administrative Tribunal's Act 1985 the applicants seeks quashing of order dated 20.7.2004 (Annexure A-1).

2. The brief facts of the case are that the applicants are working as Class IV employee with the respondents since 1996. The applicants approached this Tribunal by way of OA No.1612 of 2001 whereby seeks direction that they are entitle for temporary status as they have rendered more than 206 days of service. The above stated OA was disposed of by an order dated 07.01.2002 with a direction to the respondents to decide the pending representation of the applicants within a period of two months by passing a detailed speaking order. It is submitted that in pursuance to the above stated direction the applicants made a comprehensive representation to the respondents whereby seeking temporary status as person junior to the applicants have already been granted the same. In compliance of that respondents passed order on 12.07.2004 whereby all the applicants have been granted temporary status. Another order was passed on 20.07.2004 whereby earlier order dated 12.07.2004 conferring temporary status to the

(b)

applicants have been withdrawn which is impugned in the instant OA.

3. In pursuance to the notice issued by this Tribunal respondents filed detailed counter affidavit and contested the claim of the applicants. Preliminary objection has been raised regarding the limitation that the instant OA is barred by limitation as contained in Section 21 of the Administrative Tribunal's Act, 1985 (hereinafter to be referred as 1985 Act). Therefore, the same be dismissed on this ground alone. On merit it is submitted that under mistake an order was passed on 12.7.2004 whereby temporary status was conferred upon the applicants. Lateron when the correct interpretation was submitted to the competent authority then the earlier orders dated 12.7.2004 was withdrawn by an order dated 20.07.2004 by rectifying its earlier mistake. It is further urged that the impugned order has been passed in terms of the judgment passed by the Hon'ble Supreme Court in *SLP (Civil) 2224/2000 in case of Union of India & Anr. Vs. Mohan Pal.* After considering the judgment passed by Hon'ble Apex Court the impugned order has been passed. Lastly prayed for dismissing of OA with cost.



4. I have heard Sri Pankaj Srivastava, learned counsel for the applicant and Sri S.N. Chatterji, learned counsel for the respondents. Sri Pankaj, Srivastava, learned counsel for the applicant has vehemently argued that the impugned order has been passed in fragment violation of principles of natural justice as no opportunity of hearing was granted to the applicants before passing the impugned order. Therefore, the same is liable to be set aside having been passed in violation of well established principles of natural justice. On the ground of limitation he submitted that the applicants are pursuing the matter before the department, therefore, there is no delay in filing the OA. On the other hand Sri S.N. chatterji, learned counsel for the respondents have argued that there is no need to issue any notice to the applicant as by the impugned order the respondents have rectified the earlier mistake by which the applicants have been granted the temporary status as the same is in contravention of the judgment passed by the Apex Court in the case of Mohan Pal (Supra). He further argued that the instant OA be dismissed as the same has been filed after three years from the date of cause of action and as per (Section 21 of 1985 Act the OA is to be filed within one year from the cause of action. Since it is filed beyond limitation as per Section 21 of 1985 Act therefore OA be

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dismissed. He placed reliance on the judgment in the case of *Paramu Vs. Union of India reported in (1986) ATC 514 (Para 5)*. He also placed reliance on a unreported judgment passed in *SLP No.31085/2009 in the case of Tahir Ali Vs Union of India & Ors.*

5. I have heard the rival contentions made by counsel for the respective parties. Admittedly, the applicants were granted temporary status in pursuance to the direction given by this Tribunal by order dated 12.07.2004. Subsequently, the competent authority re examine the matter in the light of the judgment passed by the Apex Court in the case of *Union of India & Anr. Vs. Mohan Pal (Supra)*. From the perusal of the impugned order it is clear that while reconsidering the matter the competent authority have noted the judgment passed by Apex Court wherein it is stated that scheme dated 01.09.1993 is not an on going scheme. Moreover, all the applicants were not in service when the above stated scheme was made applicable. Therefore, they cannot be granted the benefit of 1993 scheme for granting temporary status, therefore, the impugned order cannot be said to be passed against the order passed by this Tribunal. Moreover, the instant OA is barred by limitation as provided under section 21 of the

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Administrative Tribunal Act 1985. Section 21 of 1985

Act prescribes the limitation for approaching the Tribunal. Section 21 of 1985 Act reads 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) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court.

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(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 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.

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6. The Section 21 of the Administrative Tribunal Act 1985 came up for consideration before the Hon'ble Apex Court in following cases:-

- a. **S.S. Rathore v. State of M.P.**
reported in 1990 SCC (L&S) 50
- b. **Administrator of Union Territory of Daman and Diu and others Vs. R.D. Valand – 1995 Supp(4) Supreme Court Cases 593**
- c. **Union of India & Ors. v. M.K. Sarkar reported in (2010)2 Supreme Court Cases 59**
- d. **Union of India & Ors. v. A. Durairaj**
reported in JT 2011 (3) SC 254

In the case of **Administrator of Union Territory of Daman and Diu and others** (Supra) the Hon'ble Supreme Court has held as under : -

“..... The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representation from time to time and as such the limitation would not come in his way . ”

7. Recently in the case of **Union of India & Ors. v. A. Durairaj** reported in **JT 2011 (3) SC 254**, the Hon'ble Apex Court has held as under:-

Re: Question(i)

12. *Section 21 of the Administrative Tribunals Act, 1985 prescribes the limitation for approaching the Tribunal in this case the medical examination of the Respondent and the non-promotion as ad hoc ASTE were in the year 1976. The Respondent accepted the*

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diagnosis that he was colour blind and did not make any grievance in regard to his non-promotion. On the other hand, he attempted to get treatment or correction contact lenses from USA (to aid the colour blind to distinguish colours correctly). On account of the non challenge, the issue relating to his non-selection in 1976 attained finality and the same issue could not have been reopened in the year 1999-2000, on the ground that medical tests conducted in 1998 and 2000 showed him to be not colour blind.

13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be a great disadvantage of effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same, and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This Court had occasion to examine such situations in *Union of India v. M.K. Sarkar (JT 2009 (15) SC 70: 2010(2) SCC 58)* and held as follows:-

"The order of the Tribunal allowing the first application of Respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. XXXXX

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 reviewing the 'dead' issue or time barred dispute. The issue of limitation or delay and

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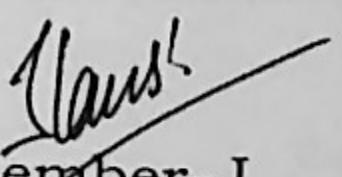
laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation. Or erase the delay and laches.

A Court or Tribunal before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be legal position and effect."

14.1 *We are therefore of the view that the High Court ought to have affirmed the order of the Tribunal dismissing the application of the Respondent for retrospective promotion from 1976, on the ground of delay and laches.*

8. In terms of Section 21 of the 1985 Act the applicant even not have filed application for condonation of delay. Therefore, the instant OA is barred by limitation as the cause of action has arisen in favour of the applicants in the year 2004 whereas the instant OA has been filed after more than three years i.e. in the year 2007.

9. In view of the above, the instant OA is dismissed. No costs.


Member-J