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Reserved
on 11.12.2012

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(Allahabad This the 21st Day of December, 2012

PRESENT
Hon'ble Mr. Sanjeev Kaushik-Member (J)
Hon'ble Ms. Jayati Chandra- Member (A)

Original Application No. 644 of 2007
(U/S 19, Administrative Tribunal Act, 1985)

Surya Mani Pushkar, son of late Shri Chanai Ram, Resident of Village Merchwar, Gyanpur, District Sant Ravidas Nagar.

By Advocate: Shri Pramod Kumar

.....Applicant

V E R S U S

1. The Union of India, through Secretary, Ministry of Textiles, Government of India, New Delhi.

2. The Development Commissioner (Handicraft) West Block No.7, R.K. Puram New Delhi 110066

By Advocate: Shri S.K. Anwar

.....Respondents

O R D E R

DELIVERED BY:-

HON'BLE MR. SANJEEV KAUSHIK, (MEMBER-J)

By means of present O.A. filed under Section 19 of Administrative Tribunals Act 1985, the applicant seeks quashing of order dated 15.10.1991 passed by respondent NO. 2 whereby his services has been terminated.

2. Facts is to be noticed first:-

Initially the applicant joined the Respondents Department as Casual Worker on temporary basis on 02.11.1978. Thereafter he was trasnferred at Carpet Weaving Training Centre Sewapuri

Varanasi. Some of colleagues of the applicant approached this Tribunal by way of ***O.A. No. 545/1986 Nand Lal Maurya and Ors. Vs. Union of India and Ors***. which was decided on 19.8.1988 where a positive direction has been given to respondents to regularize the service of the petitioners and to treat them as a regular Government Servant w.e.f. 3.10.1985. The applicant was appointed by order dated 24.8.1990, thereafter by the impugned order dated 15.10.1991, the services of the applicant has been terminated, hence the O.A. Along with O.A., the applicant has also filed an application under section 21 (3) of the Administrative Tribunals Act, 1985 read with Rule 8 (4) of C.A.T. Procedure Rules 1987 for condonation of delay in filing the O.A.

3. Pursuant to notice, the respondents appeared and resisted the claim of the applicant by filing a detailed counter affidavit and also reply to the Condonation of Delay Application.

4. We have heard Shri Pramod Kumar, learned counsel for the applicant and Shri S.K. Anwar, learned counsel representing the respondents. Learned counsel for the applicant vehemently argued that impugned order is cryptic and does not disclose any reason, therefore, the same is in violation of Articles 14 and 16 of the Constitution of India and accordingly, the same is liable to be set aside. He urged that once the services of the applicant has been regularized by the order dated 24.4.1990 then the services of the applicant cannot be terminated without applying the principles of

natural justice. He also urged that once this Tribunal in the case of ***Nand Lal Maurya (supra)*** has already directed the respondents department to treat all these employees as regular Government servant w.e.f. 3.10.1985 then the respondents cannot terminate the service of the applicant without following the proper procedure. He also placed reliance upon an order passed by this Tribunal in ***O.A. No. 570/94 – Kanhaiya Lal Yadav and others Vs. Union of India and Ors., decided on 12.09.2005*** where similar direction has been given to respondents. On the basis of above, he submitted that if the impugned order has not been passed then the services of the applicant has to be regularized from the date when he was initially appointed or from the date when this Tribunal directed i.e. 3.10.1985.

5. On the ground of delay, learned counsel for the applicant argued that after the impugned order was passed, he could not effectively represent against it as he was involved in two criminal cases and it is only after his acquittal from them that the applicant to represented the respondents to review the impugned order and allow the applicant to join the service. In support of Condonation of Delay Application, he placed reliance upon the following judgments passed by Hon'ble Supreme Court:-

> *"(i) A. Sagayanathan and Ors. Vs. Divisional Personnel Officer reported as AIR 1991 SC 424.*
> *(ii) Collector, Land Acquisition, Anantnag Vs. Katiji reported as 1987-LAWS (SC) 2-4.*
> *(iii) Dehri Rohtas Light Railway Company Limited Vs. District Board Bhojpur reported as 1992 (2) SCC 598".*

6. Per contra, learned counsel for the respondents argued that firstly the applicant has to cross hurdle of limitation as he is impugning the order of 15.10.1991 after 17 years by filing the present O.A. in the year 2007. No reason whatsoever has been given in support of Condonation of Delay Application. Merely submitting that applicant was waiting for the outcome of his criminal case does not absolve the applicant from explaining day today delay in filing the O.A. On delay, he placed reliance upon the judgment of Hon'ble Supreme Court in case of ***State of Orissa Vs. Chandra Sekhar Mishra reported as (2002) 10 Supreme Court Cases 583***. On merits, he argued that the applicant was re-employed vide order dated 24.4.1990 and in this order it has expressly been stated under clause 4 that posts are purely temporary under "PLAN" scheme and are liable to be terminated on any time without notice and without any reasons being assigned. The aforesaid appointment is also subject to production of certificate of medical fitness from the Chief Medical Officer of the District and verification of character and antecedents as per Rules. He urged that the applicant had not given correct information in his declaration form and he concealed this fact that criminal case were pending against him and for this reason, the impugned order has been passed for non-fulfillment of conditions stipulated in the appointment letter. In this behalf, he placed reliance upon the judgment in the case of ***Jainendra Singh Vs. State of Uttar Pradesh and Ors. reported as (2012) 8 Supreme Court Cases 748***. Lastly he prayed that Original Application be dismissed on the ground of delay and laches only.

7. We have given our thoughtful consideration to the entire matter with the able assistance of the learned counsel for the respective parties.

8. In view of preliminary objection of the limitation raised by the respondents, it is appropriate to decide the same first. It is not disputed that the applicant is impugning the order dated 15.10.1991 by filing the present Original Application in the year 2007. In his application for condonation of delay, only reason given by the applicant that he was involved in two criminal cases and after acquittal of the same, he immediately moved an application, therefore, delay in filing Original Application be condoned.

9. Section 21 of 1985 Act prescribes the limitation for approaching the Tribunal. Section 21 of 1985 Act reads as under:-

> *"Limitation. (i) 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;*
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> *(B) in a case where an appeal on 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.*
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> *(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".

10. From the perusal of the aforesaid Section, it is clear that under the 1985 Act the O.A. is to be filed within one year from the date of cause of action. The same is extended by another six months in terms of 21 (i) (b). If the O.A. is not filed within limitation then in terms of section 21 (3) the applicant has to move Misc. Application for seeking Condonation of delay by explaining each day delay in not filing the Original Application within the limitation and if Tribunal satisfied the cause for not filing Original Application in time then Tribunal can condone the delay.

11. Section 21 of the Administrative Tribunal Act 1985 came up for consideration before the 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*

12. In S.S. Rathore's Case Hon'ble Supreme Court held that successive representations cannot extend the period of limitation. The observations of Para 20 and 21 of the said judgments is reproduced herein under : -

> *"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.*
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> *21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Ac. 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 courts'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.*

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. "

13. Recently also the Hon'ble Apex Court has reiterated its earlier view on this matter in the case of ***Union of India & Ors. v. A. Durairaj reported in JT 2011 (3) SC 254*** and 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 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 tenses 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 for 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 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 extended 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.

(emphasis added)

14. We feel that in this case, it would be appropriate to clarify the ambit and scope of the writ of mandamus. This can best be done by relying on the well known classic on the subject, namely, **The Law of Extraordinary Legal remedies (Thomas Law Book Company, St. Louis, Mo.)** written by **Forrest G. Ferris.** In Chapter XVI of the Book relating to pleading practice and procedure, the Learned Author has observed as follows:-

"Some cases hold that the right to mandamus, if not brought within a reasonable time, is barred on the theory of analogy to statutes of limitations in civil cases, or because it would be prejudicial to respondent; other authorities on the ground that it shows acquiescence and an abandonment of the right to complain; others that laches is a fact or circumstances the court may consider in exercising its discretion respecting the issuance of writ. All seem to agree, regardless of the theory, that if the proceeding is not brought within a reasonable time after the alleged default or neglect of duty, and such delay is not satisfactorily explained, the court may, in the exercise of its discretion, refuse its issuance. This is particularly so when to grant the writ, after such delay, would work a prejudice to the party to be affected thereby.

Mandamus is generally regarded as not embraced within statutes of limitations applicable to ordinary actions, but as subject to the equitable doctrine of laches. It seems well settled that the reason mandamus will not be issued unless asked for

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within a reasonable time after the wrong happened of which relater complains, is not because of any statute of limitations, but because courts have discretion in issuing the writ, and in the exercise of that discretion will refuse mandamus if the claim has been allowed to become stale without any excuse shown for the delay, and because the relator has apparently acquiesced in the wrong complained of. .....

..... In cases involving public interest or public policy, as where mandamus was brought by a public officer for reinstatement, it is of first importance that the aggrieved party act promptly, to the end that if he prevails the government may be disturbed as little as possible, and, as in this case, so that two salaries will not be paid for a single service. In accordance with the accepted rule that mandamus is not demandable as a mater of right, the court may, and does, generally rely on its own discretion in determining whether the writ should issue."

Having regard to the above stated position, it is clear that the issue of delay and laches has to be given primary importance and due weightage before issuance of writ of mandamus by any court.

15. In absence of valid and palpable reason, we are not inclined to allow the application for condonation of delay after 17 years for the reason that it is not that the applicant was in judicial custody, he was out and moreover he was pursuing his criminal case in the Court of Law. Once a person is pursuing the matter in the Court of Law then it cannot be said that he was ignorant about his right and he could not challenge the order within time. Merely giving averment that he was waiting for the outcome of his criminal case does not entitle him to challenge the order of 1991 in the year 2007. As held by Hon'ble Apex Court each day delay has to be

explained. In this case the applicant has clearly failed to do so. It is the settled law that if a person has slept over his right then he cannot be allowed to unsettle the settle things.

16. In view of the above, the application for condonation of delay is devoid of merits and hence is dismissed. Accordingly, without touching the merits of the case, the Original Application is also dismissed on the ground of delay and laches. No costs.

(Jayati Chandra)
Member-A

(Sanjeev Kaushik)
Member-J

Manish/-