

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 14th day of September 2016

HON'BLE DR. MURTAZA ALI, MEMBER - J
HON'BLE MR. O.P.S MALIK, MEMBER - A

Original Application No.948 of 2007

Ishwari Singh S/o Late Shyam Narain Singh R/o Village & Post
Jagatpur, District Varanasi.

.....Applicant

By Adv: Shri R.K. Singh/Shri M.K. Upadhyaya

V E R S U S

1. Union of India through General Manager (G.M), Diesel Locomotive Works (DLW), Varanasi.
2. Chief Mechanical Engineer/Personal Diesel Locomotive Works, Varanasi.
3. Kamala Singh S/o Ram Singh (PNT Operator), Inspection Bill Unit 11/63, Diesel Locomotive Works, Varanasi.

..... Respondents

By Adv: Shri Anil Kumar

ORDER

BY HON'BLE DR. MURTAZA ALI, MEMBER - J

Through this OA filed under Section 19 of the Administrative
Tribunals Act, 1985, the applicant seeks the following reliefs -

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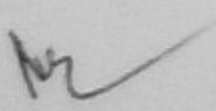
- “(i) to set aside the impugned order dated 4.8.2007 passed by respondent No.2 and direct to respondent No.2 to declare seniority as equivalent to respondent No.3.*
- (ii) to direct respondent No.2 to release the difference of the pay scale to the applicant as respondent No. 3 within fortnight from the command of this Hon’ble Tribunal.*
- (iii) to issue any other order or direction which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.*
- (iv) to award cost of the litigation”.*

2. The brief facts of the case are that the applicant and respondent No. 3 were regularized on the post of Khalasi on 16.6.1972 and 29.6.1972 respectively. The applicant and respondent NO.3 were promoted to the post of PNT Operator in the scale of Rs. 210-290 on 22.6.1981 and 7.7.1981 respectively vide order dated 22.7.1981 (wrongly stated in O.A. as 22.6.1981) - (Annexure A-1). It is stated that while promoting the applicant he was shifted to CMT Lab as Helper while respondent No. 3 remained at Mechanical (Engine Erection) department. It is further stated that in the year 1985-1986, the scale of Rs.210-290 was upgraded to Rs.260-400 but the applicant was deprived of the said scale on the ground that he was shifted to CMT Lab while respondent No. 3 was granted the upgraded scale. The applicant moved representations on 30.3.2006, 4.6.2006, 12.10.2006 and 13.4.2007 (Annexure A-2) claiming similar

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pay scale and seniority above the respondent No. 3 but the claim of applicant was rejected by respondent NO.2 vide order dated 4.8.2007 (Annexure A-3).

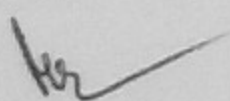
3. In the reply filed on behalf of respondent Nos. 1 and 2, it has been stated that the applicant was promoted to the post of Fitter Grade III, Fitter Grade II and Fitter Grade I on 31.5.1995, 18.8.2001 and 7.6.2004 respectively and he preferred representation for the first time in March 2006 claiming seniority and fixation of pay at par with respondent No. 3 who was promoted to Fitter Grade III, Fitter Grade II and Fitter Grade II on 20.12.1991, 6.9.1999 and 21.1.2004 respectively. It is stated that in view of letter dated 7.10.1966 (Annexure CR-1) some posts of PNT Operator were required to be filled amongst Khalasis and on receipt of option from respondent No. 3, he was promoted on the post of PNT Operator in the grade of Rs.260-400 w.e.f. 30.6.1981 and as the applicant did not give any option for the post of PNT Operator, he could not be promoted on the said post. It is also stated that the applicant submitted his option for the post of PNT Operator for the vacancy occurred in the year 1986 and he was promoted on the said post after passing the prescribed Trade w.e.f. 28.8.1986 in the pay scale of Rs.260-400. Thus, it has been submitted that the respondent No. 3 is senior to the applicant since his promotion to the post of Fitter Grade III was made in the year 1991 and the applicant neither challenged the said



promotion of respondent No.3 nor claimed seniority over him until filing of this O.A. in the year 2007. It has also been submitted that the Tribunal has no jurisdiction to entertain this O.A. as the cause of action arose in the year 1981 i.e. before establishment of CAT and also the O.A is barred by limitation as the instant OA has been filed after 26 years from accrual of first cause of action.

4. In the rejoinder, the applicant has reiterated the averments made in the applicant and further stated that no option was ever called for from him for being promoted as PNT Operator in the year 1981 and, therefore, he is entitled to get seniority over respondent No. 3 and consequential benefits arising thereto.

5. In the supplementary counter affidavit, the respondents have reiterated the averments made in the counter reply. It has also been submitted that on occurring the vacancy of PNT Operator in the year 1986, the applicant submitted his option and he was promoted in the revised pay scale of Rs.260-400 while the respondent NO.3 was promoted in the year 1981 on the post of PNT Operator and therefore, he is senior and also getting higher pay than the applicant since he was promoted to the post of Fitter Grade III, Fitter Grade II, and Fitter Grade I from the date earlier to the applicant.



6. Heard Shri R.K. Singh, learned counsel for the applicant and Shri Anil Kumar, learned counsel for the respondents and perused the record.
7. Learned counsel for the applicant argued that no option was sought from applicant for promotion on the post of PNT Operator in the year 1981 and the respondent No.3 was wrongly promoted to the post of PNT Operator ignoring the candidature of applicant. It has further been contended that respondent No. 3 was also wrongly promoted earlier to the applicant on the post of Fitter Grade III, Fitter Grade II and Fitter Grade I while the applicant was senior to the respondent No.3.
8. Learned counsel for the respondents contended that the O.A is highly time barred as the cause of action according to applicant was first accrued to him in the year 1981 when he was said to have deprived of the promotion to the post of PNT Operator and subsequently on 20.12.1991, 6.9.1999 and 21.1.2004 when the respondent No. 3 was promoted to the post of Fitter Grade III, Fitter Grade II and Fitter Grade I respectively. It has also been denied that the option for promotion to the post of PNT Operator was not called for from the applicant in the year 1981.
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9. There is limitation of one year for approaching the Tribunal from the date of cause of action accrued as prescribed under Section 21 of Central Administrative Tribunals Act, 1985, which 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 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."

10. The applicant has approached this Tribunal after a lapse of 26 years from the first date of accrual of cause of action when the respondent No.3 was promoted to the post of PNT Operator in the year 1981. The respondent No. 3 was subsequently promoted to Fitter Grade III on 20.12.1991, Fitter Grade II on 6.9.1999 and Fitter Grade I on 20.1.2004 but the applicant did not approach the Tribunal until 2007.

11. The applicant has not even filed any application for condonation of delay and by filing repeated unsuccessful representations in the year 2006 and 2007 cannot extend the period of limitation as has been held by Hon'ble Supreme Court in the case of **S.S. Rathore Vs State of M.P. reported in 1990 SCC (L&S) 50.** The relevant paras 20 and 21 of the judgment are given below—

*"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.**"*

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.

12. In the case of *P.S. Sadasivaswamy Vs. State of Tamil Nadu* reported in *AIR 1974 SC 2271*, the Hon'ble Supreme Court has observed as under –

"Where a Government servant slept over the promotions of his juniors over his head for fourteen years and then approached the High Court with Writ Petition challenging the relaxation of relevant rules in favour of the juniors, the writ petition is liable to be dismissed in limine. Such an aggrieved person should approach the Court at least within six months or at the most a year of promotion of his juniors.

It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But 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".

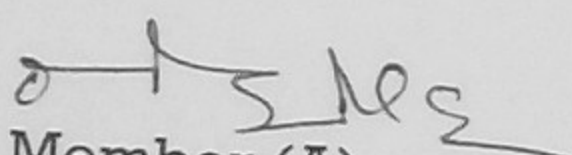
13. Hon'ble Surpeme Court in the case of **Union of India & others Vs.M. K Sarkar, 2010 (1) SCC (L&S) 1126** has held that when a stale or dead issue/dispute is considered and decided, date of such decision cannot furnish a fresh cause of action for reviving dead issue or time barred disputes. The issue of limitation or delay and latches has to be considered with reference to original cause of action and not with reference to day on which the order is passed in compliance with the Court's directions.

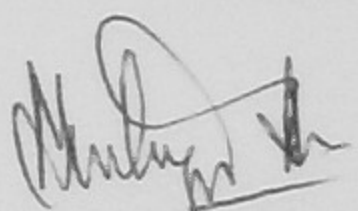
14. It is apparent that the applicant has displayed total negligence either deliberate or unintentionally in ascertaining his rights in the matter and, hence contributed in defeating the same. The inordinate delay in approaching this Tribunal for redressal of his grievances has been left unexplained. It is expected that the aggrieved parties would pursue their rights and remedies and claim their enforcement before the appropriate forum well in time and not sleep over it. Any delay particularly of an extended period, in effect negates the right of the concerned person and it may not be unreasonable to presume that in such cases he has abandoned his claim. Delay itself deprives a person of his remedy available in law. A person, who looses his remedy by lapse of time loses his right as well. On this issue, our view finds support from a judgment of Honble Supreme Court in the case of **Capt. Harish Uppal v. Union of India & Ors. (JT 1994(3) S.C. 126)**. In this case the Honble

Supreme Court has clearly held that if the parties "..... choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere.....". Therefore, in view of this position and the provisions of Section 21(3) of CAT Act, we are of the considered view that the O.A. plainly suffers from the infirmity of delay and laches and therefore deserves to be dismissed on the ground of being highly time barred.

15. Thus, in view of ~~law~~ discussion made above, we are of the view that the applicant has not been able to make out a case for consideration and the O.A. is liable to be dismissed on the ground of delay as well as on merit.

16. Accordingly, the O.A is dismissed. No order as to costs.


Member (A)


Member (J)

Manish/-