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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00964 of 2015
Cuttack, this the 8th day of March, 2016

Baikuntha Charan Panda Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00964 OF 2015
Cuttack, this the ~~8th~~ day of March, 2016

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C.MISRA, MEMBER (A)

.....
Baikuntha Charan Panda,
aged about 55 years,
S/o Late Basudab Panda,
At- Champa, PO- Udrang, Dist- Jajpur,
Presently working as SDE (General),
O/o- CGMT, Odisha Circle, Bhubaneswar, 751001.

.....Applicant

By the Advocate(s)-M/s. D.P.Dhalsamant, N.M.Rout, Arindam

-Versus-

Union of India represented through its

1. Secretary,
Department of Telecommunication,
Ministry of Communication,
Govt. of India, Tar Bhawan,
Sansad Marg, New Delhi-110001.
2. Chairman Cum Managing Director,
Bharat Sanchar Nigam Ltd.
4th Floor, Bharat Sanchar Bhawan,
Janpath, New Delhi-110001.
3. Chief General Manager,
Bharat Sanchar Nigam Ltd.
Odisha Circle, Bhubaneswar,
Dist- Khurda.
4. General Manager, Telecom District,
Bharat Sanchar Nigam Ltd.,
Koraput, At/PO/dist- Koraput.

Respondents.

By the Advocate(s) - Mr. K.C.Kanungo

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O R D E R

A.K.PATNAIK, MEMBER (JUDL.):

In this OA, the prayer of the applicant is as under:

“ 8.1 That the respondents be directed to grant promotion to the grade of SDE (T) under 67% seniority cum fitness quota from the date his juniors were promoted.

8.2 That the respondents be directed fix the pay of the applicant in the post of SDE (T) from the date his juniors were given promotion.

8.3 That respondents be directed to pay all arrear dues after fixing his pay in the post of SDE(T) with 18% interest per annum.

8.4 And further be pleased to pass any order.....”

2. Heard Mr. D.P.Dhalsamant, Ld. Counsel for the applicant, and Mr. K.C.Kanungo, Ld. Counsel appearing for Respondents-BSNL, and perused the materials placed on record.

3. Mr. K.C.Kanungo, the learned panel counsel appearing for the respondents submits that according to the applicant as per the rules he was entitled to promotion with effect from 30.03.2011 but as he was not promoted he submitted his first representation on 28.08.2013. According to the learned counsel for the applicant, he has made successive representations in this connection. As the respondents did not pay any heed to any one of the representations, he filed this OA on 21.12.2015 praying for the relief. He has contended in the given circumstances, taking into consideration the averments made by the applicant vis-a-vis the provision of the A.T.Act, 1985 and the laws on the subject, the applicant cannot be regarded as ^tvigilante and being an indolent, this OA is liable to be dismissed.

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4. On the other hand, the learned counsel for the applicant submitted that the applicant cannot be regarded as indolent as, with hope and aspiration, he was pursuing his grievance by way of making representation before his authorities and as it did not yield any result, he filed this OA.

5. Before advertizing to the points raised by respective parties, we would like to quote the relevant portion of the A.T.Act, 1985 which is as under:

19. Applications to Tribunals.—

(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance. Explanation.—For the purposes of this sub-section, “order” means an order made—

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation⁴⁵ [or society] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation⁴⁵ [or society] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees)⁴⁶ [in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government].

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.]”

20. Applications not to be admitted unless other remedies exhausted.—

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the

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remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

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

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(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.

6. No petition seeking condonation of delay has been filed rather in column No. 3 of the OA it has been stated that the cause of action is within the limitation prescribed in section 21 of the A.T. Act. This Tribunal is bound to go by the statute. This case relates to a matter of promotion and according to the applicant the cause of action arose with effect from 30.03.2011. The law on the subject is clear and it would suffice to place the relevant portion of a decision of the Hon'ble Apex Court in the case of STATE OF UTTARANCHAL AND ANOTHER v. SRI SHIV CHARAN SINGH BHANDARI AND OTHERS (Civil Appeal Nos.7328-7329 of 2013) AUGUST 23, 2013/[2013] 9 S.C.R. 609

11. The centripodal issue that really warrants to be dwelled upon is whether the respondents could have been allowed to maintain a claim petition before the tribunal after a lapse of almost two decades inasmuch as the said Madhav Singh Tadagi, a junior employee, was conferred the benefit of ad hoc promotion from 15.11.1983. It is not in dispute that the respondents were aware of the same. There is no cavil over the fact that they were senior to Madhav Singh Tadagi in the SAS Group III and all of them were considered for regular promotion in the year 1989 and after their regular promotion their seniority position had been maintained. We have stated so as their inter-se seniority in the promotional cadre has not been affected. Therefore, the grievance in singularity is non-conferment of promotional benefit from the date when the junior was promoted on ad hoc basis on 15.11.1983.

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12. It can be stated with certitude that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of an employee without any rational basis the person aggrieved can always challenge the same in an appropriate forum, for he has a right to be considered even for ad hoc promotion and a junior cannot be allowed to march over him solely on the ground that the promotion granted is ad hoc in nature. Needless to emphasise that if the senior is found unfit for some reason or other, the matter would be quite different. But, if senior incumbents are eligible as per the rules and there is no legal justification to ignore them, the employer cannot extend the promotional benefit to a junior on ad hoc basis at his whim or caprice. That is not permissible.

13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In C. Jacob v. Director of Geology and Mining and Another, a two Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -

“Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations

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with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

14. In *Union of India and Others v. M.K. Sarkar*, this Court, after referring to *C. Jacob (supra)* 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.

15. From the aforesaid 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 Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and Another*, the 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.

16. In *State of Orissa v. Pyarimohan Samantaray*⁴ it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in *State of Orissa v. Arun Kumar Patnaik*.

17. In *Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and Others*,⁶ a three-Judge Bench of this Court reiterated the principle stated in *Jagdish Lal v. State of Haryana* 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.

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18. In State of T.N. v. Seshachalam,⁸ this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:

“....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/ or 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 would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

19. 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.

20. In New Delhi Municipal Council v. Pan Singh and Others, the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in P.S. Sadasivaswamy v. State of Tamil Nadu,¹¹ wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. 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

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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.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

7. On examination of the facts of this matter with reference to the provisions of the A.T. Act, 1985, cited supra, and the decision of the Hon'ble Apex Court, quoted above, we agree with the stand point of the respondents' counsel that the applicant can safely be regarded as an

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indolent and not vigilant. However, it is the case of the applicant that he has sincerely pursuing the grievance by way of making representations but he has not been communicated any decision thereon. We strongly deprecate such action of the respondents as it is the constant view of this Tribunal that when an employee makes a representation pertaining to his service condition, the authority concerned is duty bound to consider and intimate the result of such consideration at the earliest opportunist which the respondents, as it appears, failed to do. Consideration of the grievance and intimation the result of such consideration also comes within the connotation of principles of natural justice. However, there is no final order in this OA. As such, we do not like to admit this OA so as to call for the reply from the other side. Hence, without expressing any opinion on the merit as well as on the point of limitation at this stage we direct the respondent No. 3 to consider the representation dated 20.05.2014 (Annexure-A/8) and intimate the result thereof to the applicant within a period of sixty days from the date of receipt of a copy of this order.

8. With the aforesaid observation and direction, this O.A. stands disposed of. No costs.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)