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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 167 OF 2012
Cuttack, this the 10th day of September, 2014

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

.....

Jayanta Kumar Khamari,
Aged about 36 years,
Son of Jhasaketan Khamari,
Vill/P.O.- Kenavetta, Banaigarh,
Dist.- Sundergarh, Orissa.

.....Applicant

Advocate(s)... M/s. O.N.Devdas, C.Das, M.Verma, Ms. M. Jesti

VERSUS

Union of India represented through

1. Secretary,
   Ministry of Railways,
   Railway Board, Rail Bhawan, New Delhi.

2. Chairman,
   Union Public Service Commission,
   Dholpur House, Shahajan Road,
   New Delhi-110069.

..... Respondents

Advocate(s)..... Mr. T. Rath (For R-1)

.....

ORDER (ORAL)

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

The facts which are not in dispute are that the Union Public Service Commission (Respondent No.2) issued advertisement for recruitment to Indian Engineering Service in the year 2004. No post was reserved for candidates with Physical disability. In pursuance of the said advertisement, the applicant applied as an UR candidate and accordingly he was allotted the Roll No. 1225. He appeared at the written examination

which was held on 12.06.2004 by the UPSC and upon being qualified in the said written examination as an UR candidate, he was allowed to participate in the personal tests/interview but he could not qualify in the test/interview. In the year 2007, Respondent No.2/UPSC once again issued advertisement for recruitment to Engineering Service. The Applicant again applied, appeared and secured 38th rank but he was allotted to MES against a Physically Handicapped vacancy earmarked for the same. No vacancy was earmarked for PH category candidate in any of the Railways Engineering Service as the matter for exemption of the reservation to PH candidate in the Railway was pending for approval of the Internal Departmental Committee. The Applicant represented to the Commissioner for PWD against his allotment to MES instead of IRSE/IRSS. The Commissioner, PWD directed the Ministry of Railways to allot the applicant to IRSE/IRSS. In the meantime, the applicant filed WP (C) No. 18559/2009 and in compliance of the order of the Hon'ble High Court of Orissa dated 17.09.2009 the applicant was appointed to IRSE cadre in the Railways.

2. It is the case of the Applicant that by making application dated 24.06.2011, he has sought information about the year wise backlog vacancies earmarked for PH candidates to which he was informed vide letter dated 13/14.07.2011 that there are 12 backlog vacancies earmarked for PH candidates upto the year 2004. Hence by filing this OA on 30.08.2011 he has prayed for a direction to the Respondents to select and appoint him against one of the backlog vacancies available by 2004 with all consequential benefits. Simultaneously by filing MA No. 165 of 2012 he has pointed out that there is no delay in filing this OA and if there is any delay the delay

being not attributable to him the same may be condoned. Notices both in OA and MA were issued on 13.03.2012.

3. Despite service of notice and adequate opportunity no counter has been filed by the Respondent No.2/UPSC. However, by filing counter, Respondent No.1/Railway opposed the very maintainability of this OA being hit by the provisions of Section 20 and 21 of the A.T. Act, 1985/law of limitation. In so far as merit of the matter is concerned it has been stated that he has no information about appearing the examination conducted in the year 2004 by the Respondent No.2/UPSC and even if he has appeared as no post was earmarked exclusively for PH candidates and applicant having participated in the selection process as UR candidates and failed is now estopped under law to seek direction to the Respondents to appointment him against the advertisement made in the year 2004 with all consequential benefits retrospectively. He has also thrown light on the selection and appointment in pursuance of the advertisement made by the Respondent No.2/UPSC in the year 2007 but those being not relevant in deciding the present dispute; we do not like to deal with the same. Accordingly, by placing reliance on several decisions of the Hon'ble Apex Court on the point of maintainability of this OA, the Respondent No.2 has prayed for dismissal of this OA. The Applicant more or less reiterating the facts stated in the OA and on the provision of the Persons With Disability Act (PWD Act) has prayed for grant of the relief claimed in the OA.

4. Ms. Mitali Jesthi, Learned Counsel appearing for the Applicant and Mr. T. Rah, Learned Standing Counsel for the Railway appearing for the Respondent No.1 have reiterated the facts and law mentioned in the pleadings and having heard them at length, we have perused the materials

placed on records. As per the provision of the A.T. Act, 1985 and the law laid down by the Hon'ble Apex Court, before going to the merit of the matter, it is necessary to decide on the question of limitation for which we examine the reasons assigned in the MA No. 165 of 2012 filed by the applicant seeking condonation of delay. According to the Applicant in letter dated 12.06.2004 he was intimated to have qualified in the written test for which he was to appear at the personality test/interview. In letter dated 24.6.2011 he sought information under RTI Act, 2005 with regard to reservation of PH candidate in the Indian Railway Service of Engineers which was supplied to him in letter dated 13/14.07.2011. On 08.02.2005 Government of India issued notification giving detailed list of posts in Grade A and B for appointment by the persons with disabilities. On 29.12.2005 Government of India issued notification providing reservation for persons with disabilities. Thereafter, being selected against 2007 and in pursuance of the order of the Hon'ble High Court of Orissa he was appointed in the Railway and after undergoing the necessary training he filed this OA on 30.08.2011 and, therefore, according to the applicant there is no delay and if there is any delay, the same may be condoned otherwise he would suffer irreparable loss and injury.

5. Section 20 of the A.T.Act, 1985 deals with regard to availing of remedy and Section 21 of the A.T. Act, 1985 deals with regard to the period of limitation for filing an application before this Tribunal. The said provisions provide as under:

> **"20. Application not to be admitted unless other remedies exhausted –**
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> (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had

availed of all the 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 (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. We may observe that a person who feels that his/her right has been abridged in any manner, must approach the Court within a reasonable period. This is necessary to avoid dislocating the administrative set up after it has been functioning on a certain basis for years. The impact on the administrative set up is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained. In this connection it is profitable to rely on the decision of the Hon'ble Apex Court in the case of **D.C.S.Negi -Vrs- UOI & Others** (Special Leave to Appeal (Civil) No.7956/2011 (CC 3709/2011)-disposed of on 07.03.2011) in which it has been held as under:

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the application filed under section 19 of the Act in complete disregard of the mandate of Section 21....."

7. In the case of **Basawaraj & Anr V The Spl. Land Acquisition Officer**, AIR 2014 SC 746 it has been held as under:

> "It is a settled legal provision that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other case. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similar wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.
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> ...**The applicant must satisfy the court that he was prevented by any sufficient cause from prosecuting his case and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose**.
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> It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that "inconvenience is not" a decisive factor to be considered while interpreting a statute.
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> The statute of Limitation is founded on public policy its aim being to secure peace in the community to suppress fraud and perjury to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.

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The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature."

8. Recently, in another case, in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others Vrs T.T.Murali Babu**, reported in AIR 2014 SC 1141 the Hon'ble Apex have heavily come down on the Courts/Tribunal for entertaining matters without considering the statutory provision of filing application belatedly. The relevant portion of the observations of the Hon'ble Apex Court are quoted herein below:

"Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered ad 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 activity 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. In the case at hand,

though there has been four y-ears delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility and remained unautorizsedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with '**Kumbhakarna**' or for that matter '**Rip Van Winkle**'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold." (paragraph -16)

9. At the cost of repetition it is noted that the selection was of the year 2004 and case of the applicant was considered as an UR candidate but he failed to secure the position in the merit list for which he could not be selected and appointed against the vacancies as advertised in the year 2004. Admittedly, he has also not taken any action after obtaining the information which he had obtained through RTI for fulfillment of the conditions stipulated in Section 20 of the A.T. Act, 1985. Be that since reason or ground assigned in support of the condonation of delay does not appeal to judicial conscience so as to exercise the judicial discretion to condone the delay, we deem it proper to dismiss the MA and consequently the OA. Accordingly MA No. 165 of 2012 consequently the OA stand dismissed. There shall be no order as to costs.

(R.C.Misra)
Member (Admn.)

(A.K.Patnaik)
Member (Judicial)

RK/CM/10.09.2014