

Original Application No. 500 of 2004

CORAM :

**T.R. Sivakumar,
S/o. T.A. Raman,
Private Secretary,
Central Administrative Tribunal,
Ernakulam Bench, Kochi - 682 017,
Residing at : House No. II/341-A,
"Karthika", Vazhakkala,
B.M.C. Post Office, Thrikkakara : 682 021.**

... Applicant.

versus

1. Union of India, Represented by
The Secretary to the Government of India,
Ministry of Personnel Public Grievances & pension,
(Department of Personnel and Training)
New Delhi.
2. The Principal Registrar,
Central Administrative Tribunal,
Principal Bench, New Delhi - 110 001.
3. The Registrar,
Central Administrative Tribunal,
Ernakulam Bench, Indira Nagar,
Kaloor, Kochi - 682 017.
4. The Deputy Registrar,
Central Administrative Tribunal,
Ernakulam Bench, Indira Nagar,
Kaloor, Kochi - 682 017.

(By Advocate Mr. T P M Ibrahim Khan, SCGSC)

O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The chronological sequence of events in this case would be essential to have a grip on the subject and the same are as under:-

Date	Event
30/03/89	Applicant who was earlier functioning in the Central Water Commission as stenographer Gr. D was selected in the same capacity in the C.A.T. Ernakulam Bench w.e.f. 18-12-1987, was appointed as steno grade 'C' /Court Master on continued deputation basis.
08/05/91	Applicant's services as Court Master regularized with retrospective effect, by an order passed in pursuance of the recommendation of the DPC held on 23-11-1993.
17/11/95	P.B approval, regularizing the services of the applicant as Court Master passed, with retrospective effect from 02-11-1989, instead of w.e.f. 08/05/1991. Communication in this regard was made by order dated 23-01-1996.
19/01/96	Applicant made representation stating that his juniors having been promoted on ad hoc basis as Sr. P.A., he should also be given the same benefit w.e.f. From the date his juniors were given the ad hoc promotion. This was followed by another representation dated 19-01-1996. Request in the latter representation included adjustment of the applicant as Private Secretary w.e.f. February, 1996 at Ernakulam, where a vacancy was likely to arise.
23/12/96	Many a junior to the Applicant was promoted as Private Secretary in the then scale of Rs 2000 - 3200 to the exclusion of the applicant, against which the applicant later on represented.
09/04/97	The P.B. CAT informed the Ernakulam Bench of the CAT stating inter alia that the applicant for giving the applicant the promotion of Sr. P.A., the applicant may give his option to be posted as Sr. P.A. In the Principal Bench, Allahabad, Calcutta or Ahmedabad Benches where the applicant could be adjusted as Sr. P.A. Against the available vacancy of Sr. P.A./P.S. It was also stated in the said letter, 'in case he is not interested to move out of Ernakulam Bench, he will get promotion as Sr. P.A. In that Bench as and when a vacancy of Sr. P.A./P.S. is available in that Bench.' This was informed to the applicant through the Registrar, Ernakulam Bench by letter dated 01-05-1997.




Date	Event
22/10/97	Applicant in response to the above letter of P.B submitted, "I have been asked to signify my consent to be promoted as Senior PA. In this connection, I hereby give my willingness to be considered for promotion as Senior PA." It is thereafter, the applicant in the same letter submits, "It is learnt that a vacancy of Private Secretary will fall here in January, 1998, on account of completion of the 6 th year of deputation of the present incumbent. I therefore, request your Lordship to take necessary steps to accommodate me on my promotion as Senior PA against the post of Private Secretary, which is falling vacant in January, 1998.
28/01/98	Applicant was appointed on ad hoc basis as Senior Personal Assistant in the scale of Rs 6,500 - 10,500/- w.e.f. 29-01-1998.
01/01/99	Applicant has been regularly appointed as Private Secretary, on the basis of the final seniority. Some of his erstwhile seniors and after the recasting of seniority who became juniors to the applicant continued their ad hoc position as Private Secretary.
29/06/2000	Applicant requested for ad hoc promotion as Sr. Personal Assistant/Private Secretary from the date his immediate juniors were promoted.
31/07/2000	The Principal Bench informs the applicant that his request for promotion on ad hoc basis as Sr. Personal Assistant/Private Secretary could not be acceded to in view of the fact that his juniors were promoted on ad hoc basis to his exclusion on the basis of the then available seniority list, in which the applicant was junior. However, his case for pay protection at par with his juniors due to the revision in the seniority position of Court Masters may be considered as per rules at appropriate time as and when they will be promoted on regular basis.
30/10/2001	As some of the ad hoc private secretaries junior to the applicant were regularized in that post w.e.f. 01-01-1999, applicant made a representation for ad hoc promotion w.e.f. 1996 when his juniors were so promoted.
08/01/02	The Principal Bench rejected the above representation of the applicant holding, <i>"the Rules envisage that pay protection can be granted only in the event the senior officer accepts the offer of appointment when made. He was made the offer in October, 1997 which he did not accept and on the contrary he persisted his request for appointment in Ernakulam Bench itself, knowing that on the date of his making this request no vacancy in the grade was available in Ernakulam Bench. The only inevitable and inescapable conclusion drawn is that he had refused to accept the offer when made in October, 1997 and accordingly, he is not entitled for pay protection as requested."</i>
15-01-2002	The above communication was forwarded by the Registrar, Ernakulam Bench to the applicant.


Date	Event
12/06/03	Applicant again makes a representation for reconsider the decision and pass favourable orders. This remained unresponded to.
25-06-2004	Applicant filed OA with an application for condonation of delay of 525 days.

2. In addition to the above sequence of events, one more fact related to this case is that as early as in 1997 the applicant had moved O.A. No. 1466/96 which was renumbered as OA 2428/97 of the Principal Bench, with regard to his ad hoc promotion and on his having been promoted from January, 1998, he had filed one Misc. Application No. 288/98 praying for withdrawal of the OA in view of the subsequent development and with liberty to take the left over grievances before the Departmental authorities and this MA was allowed with the liberty sought and the OA was disposed of as withdrawn vide order dated 05-02-1998.

3. The claim of the applicant is that he should be granted promotion as Private Secretary on ad hoc basis from the date his juniors were promoted in that capacity since 1996, whereas, he was given the promotion in January, 1998 only and this has telescopically affected his pay and allowances to his detriment.

4. The respondents have contested the OA and main points of their objection to the claim of the applicant, as contained in the reply are as under:-



- (a) The applicant while holding the post of Stenographer 'D' in the Central Water Commission, New Delhi, was selected on deputation basis and as such joined duty with effect from 18.12.1987. He was appointed as Stenographer Grade-C/ Court Master on ad hoc basis on continued deputation basis with effect from 30.03.1989. The applicant was absorbed as Steno Grade 'D' with effect from 1.11.1989. He was subsequently regularised as Court Master with effect from 8.5.1991 on the recommendation of the Departmental Promotion Committee held on 23.11.1993. However, the competent authority had antedated his regularisation as Court Master to 2.11.1989.
- (b) The applicant submitted a representation requesting that he may be considered for ad hoc promotion to the post of Senior PA with effect from the date on which his immediate juniors were promoted. The applicant being regularised as Court Master with effect from 2.11.1989 would have become eligible for consideration for the post of Senior P.A. Only on 2.11.1996.
- (c) Meanwhile, the applicant had filed an O.A. No. 1466/96 which was renumbered by the Principal Bench as O.A. No. 2428/97. On a request made by the applicant, the Principal Bench permitted him to withdraw the said O.A. with liberty to take the left over grievances before the departmental authorities vide order dated 5.2.1998.
-  (d) The respondents had considered yet another representation of the applicant for promotion as Senior P.A. and for adjusting against a suitable vacancy at the Ernakulam Bench itself

and the applicant was directed to give his consent for promotion as Senior PA at Principal Bench, Allahabad Bench, Calcutta Bench or Ahmadabad Bench where the applicant can be adjusted against the available vacancy. As per letter dated 22.10.1997, the applicant had submitted that he may be accommodated on promotion as Senior PA against the post of Private Secretary to be fallen vacant in the month of January, 1998. Subsequently, he was promoted as Senior PA on ad hoc basis with effect from 29.1.1998 in the Ernakulam Bench itself as no vacancy in the grade of Senior PA/Private Secretary was available at Ernakulam Bench from a prior date.


- (e) The applicant on 29.6.2000 had submitted a detailed representation requesting to grant the benefit of ad hoc promotion as Senior P.A. with effect from the date of such promotion of his next junior in the cadre of Court Masters and consequential benefits. The applicant was informed that his case for ad hoc promotion with retrospective effect may not be considered at this stage as his juniors were promoted on ad hoc basis by the then draft seniority list of Court Masters. However, his case for pay protection at par with his juniors due to revision in the seniority position of Court Masters may be considered as per Rules at appropriate time as and when they will be promoted on regular basis. The applicant had again submitted a representation dated 30.10.2001. The same was again considered and he was informed as per order dated 15.1.2002 that as he had refused to accept the offer made in October, 1997, he is not entitled to pay protection as requested. Aggrieved by the above order, the applicant



had again submitted Annexure A/7 representation dated 12.6.2003 requesting to reconsider the matter and to grant him the benefit of promotion at least on proforma basis with effect from the date of promotion of his juniors. The submission of the applicant that the Annexure A/6 order was illegal and unsustainable, is not correct as the order was issued by the competent authority.

- (f) The applicant had filed a Miscellaneous Application No. 453/2004 seeking condonation of delay of 525 days. The main grounds advanced by the applicant seeking condonation of delay of such a long period is that against A/6 impugned order dated 15.1.2002, the applicant made another representation dated 12.6.2003. As can be seen that the arguments would not save him from the question of limitation as Annexure A/7 itself was filed after the period of one year. It is well settled that repeated representation will not fill the gap of limitation.

5. Arguments were heard. The counsel for the applicant first submitted that there has been some delay in approaching the Tribunal and the same was in fact due to the fact that the applicant, after receipt of the initial rejection order in 2002, again made a comprehensive representation in 2003 which, according to the information he had, was under consideration and it was only when he could not get any reply to the same, the applicant had moved this Tribunal. Again, as the issue involved is ad hoc promotion, whose proximate and immediate impact is on pay and allowances, the same




being recurring, as held in the case of M.R. Gupta vs Union of India, (1995) 5 SCC 628. As regards the merit of the matter the counsel submitted that earlier as per a particular seniority position, the applicant was not senior and some had been promoted on ad hoc basis. However, later on when the seniority list was set right, the applicant was the senior to be promoted on ad hoc or regular basis in preference to others and since the mistake in assigning wrong seniority was due to the fault of the administration, the applicant should not be made to suffer and accordingly, he should be promoted on ad hoc basis with effect from the date his juniors were promoted. As regards the contention of refusal to promotion, the counsel invited our attention to the communication dated 22nd October, 1997 wherein the applicant had clearly stated, "**I hereby give my willingness to be considered for promotion as Senior P.A.**" and according to the counsel, the subsequent paragraph of the aforesaid letter only conveys the request of the applicant for being posted at Ernakulam against the post of Private Secretary which was falling vacant in January, 1998. Thus, the above words cannot be taken as a refusal to accept the promotion as Senior P.A. Again, in this case the claim of the applicant goes back to the date of promotion on ad hoc basis of the junior, which was in 1996 itself and the one for which consent was sought was for ad hoc promotion from 1997. As such, according to the counsel, the claim of the applicant springs up on account of finalization of seniority list whereby actually the applicant was senior to others, but under the draft seniority his juniors were promoted on ad hoc



basis.

6. Per contra, the counsel for the respondents argued that the claim is time barred; that the applicant was made regular w.e.f. 01-01-1999 and none of the juniors were made regular prior to the applicant and the earlier ad hoc benefits of the juniors cannot qualify for stepping up of pay of the applicant.

7. First the aspect of limitation. The counsel for the applicant had narrated the reasons for delay in the miscellaneous application and it was those reasons apart that the aspect of 'recurring nature of the cause of action' has been reflected in the M.A. For condonation of delay. In regard to this, one point needs to be dealt with. In service matters, save a few cases, in all other matters, the issue has an impact with the pay of the employees. For example, in matters of wrong fixation of seniority, denial of promotion, disciplinary proceedings termination of service etc., there cannot but be a direct and proximate link with pay of the employees. M.R. Gupta in fact distinguishes a one time action and a recurring cause of action. The Apex Court has dealt with the subject as under:-



" The appellant claimed that the fixation of his pay on his joining service in the Railways was incorrect and that he was entitled to fixation of his pay after adding one increment to the pay which he would have drawn on 1-8-1978 in accordance with Rule No. 2018 (N.R.S.N. 6447) equivalent to Fundamental Rule 22-C."

.....

"The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao v. Mattapalli Raju (1950) 1 MLJ 752).

7. *Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S. Rathore v. State of M.P. (1989) 4 SCC 582. That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.*

8. *For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs."*

8. Thus, in the instant case since the claim of the applicant is one of ad hoc promotion from a date his juniors were promoted, the case is of one time action and increase in pay etc, is a consequential effect. Thus, M.R. Gupta does not apply in strict sense. However, considering the other reasons given by the applicants in the M.A and taking into account the fact



that the applicant has been pursuing the matter of his ad hoc promotion right from 1996, it is amply clear that the applicant has been vigilant in pursuing the case and hence, limitation aspect in this case has to be dealt on the lines prescribed by the Apex Court in the case of **Collector, Land Acquisition v. Katiji, (1987) 2 SCC 107** wherein the Apex Court has held as under:-

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

9. The above decision was reinforced in one of the latest judgments in the case of **State of Nagaland v. Lipok Ao, (2005) 3 SCC 752**, wherein




the Apex Court has held as under:-

"In Collector, Land Acquisition v. Katiji a Bench of two Judges considered the question of limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice — that being the life purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational, common-sense, pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant. The delay was accordingly condoned."

10. In view of the above, the delay in this case deserves to be condoned.

As such, we do so.


11. Now on merit. The root of the matter lies in the grant of regularization of the applicant. Earlier, services of the applicant who joined the respondents on deputation basis as Court Master w.e.f. 30-03-1989, were regularized w.e.f. 08-05-1991 in pursuance of the recommendations of the DPC held on 23-11-1993. As the date of regularization was to in fact to be anterior to the above date, the applicant represented and that the applicant's services were regularized w.e.f. 02-11-1989 vide order dated 23.01.1996. While doing so, the respondents seem to have omitted to reschedule the seniority of the applicant in the grade of Court Master immediately after passing the order of regularization of the applicant in the grade of Court Master w.e.f. 02-11-1989, and it is this omission that seems to have resulted in his juniors having been promoted on ad hoc basis as Sr. P.A. earlier to the applicant. It is this fact that gave the applicant the cause of action and grievance, which he tried to ventilate through OA No. 1466/1996 (which was later on renumbered as OA No. 2428/97 of the P.B.). During the pendency of the OA when the applicant was promoted on ad hoc basis as Sr. P.A, he had prayed for withdrawal of the OA with liberty to agitate against the left over grievances before the administrative authorities and the said OA was disposed of as withdrawn, giving the liberty to the applicant as prayed for. The agitation continued in regard to actual date of ad hoc promotion and the consequential pay fixation. Admittedly, the promotion granted to the juniors to the applicant was prior to conferring upon the applicant the regularization of his services as court master w.e.f.



02-11-1989. Had the authorities accorded the said regularization w.e.f the said date 02-11-1989 at that time itself when the services of the juniors were regularized, obviously the applicant too would have been promoted as ad hoc Sr. P.A and perhaps even before the juniors were granted the ad hoc promotion. Thus, non promotion of the applicant to the grade of Sr. P.A on ad hoc basis is not on account of his fault but due to certain errors committed by the respondents. It is settled law that a party cannot be made to suffer for no fault of his, vide **Bhoop v. Matadin Bhardwaj, (1991) 2 SCC 128**, wherein the Apex Court has held, "*The learned Single Judge in the High Court rightly held that a party cannot be made to suffer for no fault of her own.*" Again, in **Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363** the Apex Court has held "*The mistake or delay on the part of the department should not be permitted to recoil on the appellants.*"

12. In view of the above, we are satisfied that the applicant has made out a strong case in his favour.

13. The respondents have contended that stepping up of pay is not admissible when the juniors were promoted on ad hoc basis. And that the applicant had refused his promotion. First of all, a bare reading of the consent letter dated 22-10-1997 does not reflect any refusal. Again, it is not in respect of ad hoc promotion which the applicant claims through this OA.



His claim dates back to 1996 when his juniors were promoted. Had the case been that the applicant at the relevant point of time asked to exercise his option and had he refused the promotion, the stand taken by the respondents would have been in order as the same would be in conformity of the decision of the Apex Court in the case of **D.G., ESI v. B. Raghava Shetty, 1995 Supp (2) SCC 681**, wherein the Apex Court has held as under:-

"5. It is not in dispute that the contesting respondents had expressed their unwillingness to be posted as UDC In-charge of local offices. Probably they declined because those places were small and they would have lost the benefit of HRA and CCA. Unlike Respondent 2 they refused to avail of the benefit of being UDC In-charge and preferred to remain in the Regional Office and continue to have the benefit of HRA and CCA. It is also not in dispute that posting as UDC In-charge is not a promotion from the cadre of UDC to a higher cadre. Such postings were made on a temporary and ad hoc basis. Again, when Respondent 2 was posted as Head Clerk at the local office in Shahbad that was also on a temporary and ad hoc basis and by way of local arrangement. When the regular promotions from the cadre of UDC to the cadre of Head Clerk came to be made in 1989 pay of Respondent 2 came to be fixed at Rs. 1680, at a higher rate in terms of FR 22-C. The contesting respondents were not entitled to such a benefit and, therefore, their pay was fixed at Rs. 1640. The contesting respondents had no grievance to make when Respondent 2 was posted as UDC In-charge at Shahbad local office. What was submitted by them was that in 1985 when Respondent 2 was posted as Head Clerk in that office fresh options should have been invited by the Corporation. This contention had found favour with the Tribunal and, therefore, it felt that as no option was again called for at that time the contesting respondents suffered injustice. The said posting was made by way of local arrangement and as per the prevailing practice. After having expressed their unwillingness to be posted at local offices as UDC In-charge the contesting respondents had not shown their



willingness for being considered for their posting as UDC In-charge if there was going to be a possibility of such UDC In-charge being posted as a Head Clerk by way of local arrangement. It is difficult to accept the submission made by the contesting respondents that they were not aware of such a possibility. Under these circumstances it is difficult to appreciate how FR 22-C can be brought to help for stepping up the pay of the contesting respondents to bring it on a par with that of Respondent 2. FR 22-C provides for fixation of initial pay of a government servant."

14. Certainly, such is not the case here, for, when juniors to the applicant were promoted, the applicant's services as Court Master were not regularized w.e.f. 02-11-1989. Necessity to pen the representation dated 19-01-1996 (*sic* 1997) by the applicant arose only on account of the reason that the juniors were promoted in 1996 to the exclusion of the applicant. Thus, what the applicant seeks is not one of stepping up of pay but ad hoc promotion from a retrospective date on the basis of his date of regularization as Court Master and from the date his juniors have been promoted.

15. In view of the foregoing the applicant is entitled to ad hoc promotion as Sr. P.A. From the date his juniors were promoted in 1996. But the question is whether the applicant is entitled to payment of arrears. Fairly, the counsel for the applicant submitted at the time of hearing that the applicant does not insist on that prayer and would be satisfied if the applicant is granted ad hoc promotion as Sr. P.A from the date his juniors were promoted in 1996 with notional fixation of pay and actual promotion be w.e.f.

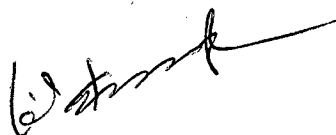


The date he assumed charges as ad hoc Sr. P.A./Private Secretary i.e., w.e.f. 29-01-1998.

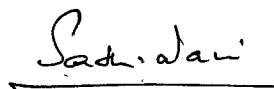
16. The O.A., therefore, succeeds. It is declared that the applicant is entitled to be promoted on ad hoc basis with effect from 1996 from the date his juniors, those who were promoted vide order dated 23-12-1996. However, the promotion is purely on notional basis and the pay of the applicant shall be fixed from 23-12-1996 in the grade of Rs. 2000 – 3200 and increments granted on notional basis and his actual pay in the above pay scale be worked out with effect from the date of his actual promotion, i.e. from 29.01.1998 and the difference in pay and allowance paid to him. This order shall be complied with, within a period of three months from the date of communication of this order.

17. No costs.

(Dated, the 31st August, 2006)



K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CVR.