

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.306/2006

**Date of Reseved : 23.7.2012
Pronounced on 26 .7.2012**

**Hon'ble Dr. K.B.S. Rajan, Member (J).
Hon'ble Mr. S.P. Singh, Member (A)**

Rajendra Bhushan Gupta (R.B. Gupta) aged about 75 years S/o Sri Deokali Prasad retire SPM LSG Faizabad Cantt. R/o 301 Amaniganj, Faizabad City.

... Applicant.

By Advocate: Sri R.S. Gupta.

Versus.

1. Union of India, through the Secretary Department of Post Dak Bhawan, New Delhi.
2. Chief Postmaster General U.P., Lucknow.
3. Director Postal Services O/o Chief Postmaster General U.P., Lucknow.
4. Senior Superintendent of Post Offices, Faizabad.

.... Respondents.

By Advocate: Sri S.K. Tiwari.

(Reserved on 23.07.2012)

ORDER

By Dr. K.B.S. Rajan, Member (J).

This is a case of an octogenarian who had filed this case claiming promotion dating back to 1977 - 78 in the post of lower selection grade cadre on the ground that though the applicant was promoted in 1980, later on his juniors in the circle gradation list had been promoted with retrospective effect from 1977 - 78.

2. Briefly stated, the applicant joined the postal department in number 1950 and as per the promotion and allotment of L.S.G. Cadre against the 2/3rd quota of

1977 - 78, the applicant was promoted to the said grade vide order dated 15-04-1980. Annexure A-2 refers. The promotion was on seniority cum fitness basis. The name of the applicant appeared at serial No. 75, while that of one Shri K.K. Chaturvedi appeared at serial No. 82.

3. The applicant filed Annexure A-3 representation dated 09-08-1990 to the effect that this promotion being for the 1977-78 quota, the same should have been accordingly from 1978 only and not from a later date of 1980. This request was further renewed in 1989 vide Annexure A-5. It is stated that a similar representation was filed by Shri K.K. Chaturvedi, which was responded to by order dated 07 - 05 - 1991 stating that delay in promotion was beyond the control of the Department and as such the representation of the applicant for ante dating the date of promotion from 1978 could not be acceded to. No such reply is stated to have been furnished in the case of the applicant, who stood superannuated on 30-06-1989.

4. Thus, in 1991, the afore mentioned K.K. Chaturvedi moved the Central Administrative Tribunal by filing OA No. 1138 of 1991. This application was considered by the Tribunal which held that the applicant should have been promoted whenever the vacancy was existing. Accordingly, the respondents were directed to consider whether the applicant was entitled to promotion in the year 1976 - 77 or in subsequent year when the DPC met and in case he was found entitled, he would be deemed to have been notionally promoted with effect from the date and not from the year 1980. Annexure A-4 order date 08-01-1993 refers. The said order of the Tribunal was complied with vide Annexure A-6 order dated 17 - 10 - 1995.

5. Another individual Ganpath Lal by name who was also similarly placed as the applicant herein moved the Tribunal in OA No. 476/98 which was decided on 28-06-2005 allowing the claim of the said individual. Annexure

A-13 refers.

6. In so far as the applicant is concerned, he had, according to him, been moving periodically representations seeking such an antedating of promotion on notional basis, which, however, was not responded to and it was to his 2005 representation that the respondents had, vide the impugned order dated 12-04-2006 at Annexure A-1 stated that the case of the applicant has been examined and it was found that shri K.K.Chaturvedi was declared senior by the Hon'ble Tribunal and in compliance to Court order he was promoted notionally in L SG cadre and the order of the court was applicable in that case only. Hence this application, seeking the following reliefs:-

"(i). That, the Hon'ble Tribunal may graciously be pleased to kindly quash the impugned order Annexure No.1 dated 12.4.2006 directing the respondents to give the applicant promotion to the LSG cadre since his junior Shri K.K. Chaturvedi was given promotion vide Annexure No.5,6 and 12 ensuring restoration of rights of the applicant under Article 14 and 16 of the Constitution of India and entitled to same treatment.

(ii) That, as consequence of the first relief the Hon'ble Tribunal may graciously be pleased to kindly allow all consequential service and retiral benefits to the applicant.

(iii). That, Hon'ble Tribunal may further be pleased to allow cost of the litigation in favour of the applicant against the respondents."

7. The respondents have contested the OA. They have, by and large, admitted the facts as contained in the OA but have stated that in the other two cases, it was on account of the court's order that notional ante dating of promotion was made.

8. The applicant filed an amendment OA including in his prayer, for grant of 24% interest as well.



9. Counsel for the applicant submitted that this is a case wherein the respondents ought to have followed of their own, the very same principle and logic which weighed in the mind of the tribunal in allowing the other two applications of Shri K.K. Chaturvedi and Shri Ganpat Lal. Not only that they had not by themselves considered the case of the applicant but when the applicant pointed out his claim, even then, they are refusing to acceded to the request of the applicant. The applicant was all along under the impression that his case would be considered by the authorities concerned and it is only as late as 2006 that the respondents for the first time rejected the case of the applicant and hence this application has been filed in the very same year.

10. Counsel for the respondents submitted that a perusal of the pleadings would reflect that insofar as the other two individuals are concerned, they approached the Hon'ble Tribunal at the appropriate time and accordingly their cases were considered by the Tribunal. In the instant case however, the applicant who could approach the Tribunal along with them or immediately thereafter had chosen to keep silent continuously for a number of years and allowed it to become sufficiently stale and now tries to afford a new life to his claim, by filing a representation in 2005. Thus the applicant having not come up before the Tribunal on time cannot be given any benefit since limitation is staring at his face.

11. Arguments were heard and documents perused. Though in reply to the original application there was no reference to limitation aspect, since the council had referred to the same, the Tribunal is duty bound to consider the same, as the Apex Court in the case of D.C.S. Nagi Vs. Union of India (Civil Appeal No. 7956 of 2011), emphasised the need to look into the limitation aspect. Of course, justification was sought to be given by the counsel for the applicant that all that the applicant, a retired person could do, was only to

go on making the representations before the authorities concerned. This was promptly done by the applicant and the moment his case was turned down by the respondents, he wasted no time to approach this court.

12. The question is whether in so far as a limitation aspect is concerned the contention of the applicant that there is no delay is to be accepted or as contended by the respondents, the case has to be held as not maintainable on account of delay and laches. Decisions of the Apex Court in various cases as hereinafter referred would guide the Tribunal in this regards.

13. The Constitution bench judgement of the Supreme Court in the case of **S.S. Rathore vs State of M.P. had held 1989 (4) SCC 582** as 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.

14. The term 'unsuccessful' has not been interpreted in any particular way in the said judgement. If that meant that a representation should be treated as unsuccessful when once it is rejected, subsequent representations, albeit by raising the level of the addressees, have to be treated as only unsuccessful the representations. For, the person concerned, on the very first the rejection of this case, could have approached the Tribunal, he having exhausted the administrative remedies. In the alternative, if in the event of no response from the respondents for

substantial period, say six months, it would be deemed that the representation has been rejected. In that event also, the applicant should have approached the Tribunal within the time limit reckoned from the date of deemed rejection. In fact, section 20(2) of the administrator tribunal's act does provide for such a situation, as stated in the aforesaid judgment too.

15. The Apex Court has, in the following cases emphasised that the Tribunal should be conscious of the limitation aspects and further held that limitation cannot be elongated by consideration of representation filed belatedly.

(a) **A.P. SRTC v. G. Srinivas Reddy, (2006) 3 SCC 674,**
wherein the Apex Court has held as under:-

19. *There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the*

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authority deciding it. Representations of daily-wagers seeking regularisation/absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".

20. Therefore, while disposing of the writ petitions with a direction to "consider", there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter.

(b) In *C. Jacob v. Director of Geology and Mining, (2008)*

10 SCC 115, the Apex Court has stated as under:-

8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying to such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they

assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. 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 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.** (Emphasis supplied)

(iii) The above has been reiterated in a subsequent case of **Union of India v. M.K. Sarkar, (2010) 2 SCC 59**, wherein the Apex Court has held as under:-

16. 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. If 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 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 do.

16. It is with the above decisions in mind, that the case of the applicant has to be viewed. True, the applicant is senior to the two other individuals who were granted notional promotion to LSG cadre w.e.f. 1977-78. And, the applicant did raise his claim at the appropriate time. However, when the other individuals, similarly situated, could approach the court, nothing prevented the applicant to move the Tribunal at the appropriate time. His explanation that he had been pursuing the matter administratively may not be accepted when Section 20(2) of the A.T. Act is specific that a government servant could approach the Tribunal after six months of his representation, if the representation is not disposed of. Thus, the applicant in this case ought to have approached the Tribunal within a reasonable time. But he chose to go on making representations after representations. Here again, even as per the applicant, his representations are as under:-

- (1) 20-05-1980
- (2) 11-02-1981
- (3) 29-04-1985
- (4) 02-12-1986
- (5) 26-09-1989

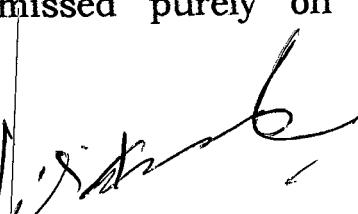
17. Thereafter, there has been a sense of hibernation till 21-01-1993, followed by reminder dated 14-01-1994 and thereafter, after 11 years gap, the applicant moved his last representation on 07-

11-2005. Thus, the long gap between two representations non-suits the applicant from claiming the relief at this distance of time.

18. Even if the applicant's claim is allowed, all that he could get is pension from hence and at best arrears of difference in the quantum of pension as for three years prior to the filing of the OA. For, even in matters of recurring cause of action, limitation as for money matter would hold the field, as held by the Apex Court in the case of ***M.R. Gupta v. Union of India, (1995) 5 SCC 628*** read with the decision of the Apex Court in the case of ***Jai Dev Gupta v. State of H.P., (1997) 11 SCC 13***. The applicant retired in June, 1989 in LSG Grade and his pension, after the VI Pay Commission Recommendations were accepted, as on date would be at the minimum in the pay scale prescribed for the said post. There would not be indeed much difference between the pension drawn by either Chaturvedi or Ganpath Lal on the one hand and the applicant on the other hand. In any event, the applicant has to blame himself for not having approached the court on time. We do appreciate the efforts of the counsel for the applicant in his attempt to give a fresh lease of life to this dead claim, but the law is against the same.

19. Hence, the OA is dismissed purely on account of limitation. No cost.


(S.P. Singh)
Member (A)


(Dr. K.B.S. Rajan)
Member (J)