

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH,  
LUCKNOW.**

**Original Application No. 346 of 2011**

Reserved on 15.12.2014.

Pronounced on 17<sup>th</sup> December, 2014

**Hon'ble Mr. Navneet Kumar, Member-J**

**Hon'ble Ms. Jayati Chandra, Member-A**

Onkar Singh alias Sankaroo Singh, aged about 64 years, S/o Sri Durga Bux Singh, GDS BPM Thawar (Mall), Lucknow, R/o Village & P.O. Thawar District Lucknow.

.....Applicant

By Advocate : Sri R.S. Gupta

Versus.

1. Union of India through the Secretary, Ministry of Communication & I.T. Department of Posts, Dak Bhawan, New Delhi.
2. Chief Postmaster General, U.P., Lucknow.
3. Senior Superintendent of Post Offices, Lucknow.

.....Respondents.

By Advocate : Sri S.P. Singh

**ORDER**

**By Ms. Jayati Chandra, Member-A**

This O.A. has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 seeking following relief:-

- “(i) to direct the Opposite parties to promote him in postman cadre in the year 1998/1999/2000 against the vacancies meant for EDA (GDS) cadre for promotion by seniority quota if required after quashing the selection of juniors most candidates selected and appointed through examination by merit quota illegally against vacancies meant for seniority quota w.e.f. the date such junior candidate was promoted in the year 1999/2000 onwards.
- (ii) to direct the Opposite parties to pay arrear of salary and allowances in consequence of relief no.1 alongwith interest @ 18% per annum compoundable.
- (iii) Any other relief deemed just and proper in the circumstances of case with cost of O.A. in favour of the applicant.”

2. The facts of the case, in brief, are that the applicant was initially engaged as EBBPM w.e.f. 16.11.1983. He completed 15 years of service on 16.11.1998 and as such he became eligible for consideration of his promotion to the post of Postman. There were

49 vacancies in the year 1998 out of which 25% i.e. 12 posts should have been earmarked for promotion of EDAs who had completed 15 years of service. Similarly there were 22 vacancies in the year 1999, 8 in the year 2000, 28 in 2001, 08 in 2002 and 27 in 2003, but the case of the applicant against these vacancies have not been considered. The applicant kept giving repeated representation to the respondents for consideration of his name for promotion against such vacancies on the basis of his eligibility and seniority, but the respondents kept silent; Initially, on the wrong advice of his counsel, he filed Writ petition No. 7460 (S/S) of 2004 before Hon'ble High Court and the same was dismissed as withdrawn vide order dated 21.2.2011. Thereafter the applicant moved modification application vide C.M. Application No. 46233 of 2011 for granting liberty to the petitioner to file Original Application before the Central Administrative Tribunal, which was rejected vide order dated 19.5.2011. Thereafter, without loss of any further time, this O.A. has been filed on 18.8.2011. The delay in filing the Original Application has been sought to be condoned by delay condonation prayer filed alongwith the O.A.

3. The respondents have raised their objection against delay condonation prayer on the ground that the applicant has approached this Tribunal without clearly specifying as to which vacancy year would be applicable to him. The relief sought is also very ambiguous that he has sought to see this O.A. under Section 19 of A.T. Act for promotion in the cadre of Postman in the year 1998, 1999, 2000 when the applicant was very much in service having retired much thereafter. More-over Section 19 of A.T. Act clearly stipulate that the applicant must approach the Tribunal after being aggrieved by the specific order passed by the respondents. As per his own averments, many juniors allegedly have been posted prior to him, in which case, it was incumbent upon the applicant to move a representation before the authorities concerned and if his representation could not have been decided within reasonable time, he ought to have approached this Tribunal within the time specified therefor, but he slept over his right for years together.

4. The applicant has filed Reply to the objection filed by the respondents against delay condonation prayer and has stated that the O.A. is within time and it should be decided on merits.

5. We have heard the learned counsel for the parties and have also perused the pleadings on record.

6. The applicant has claimed relief as per promotion prospects as enshrined in Section 8 of P&T Manual on account of his seniority position. He has further stated that his juniors were continuously promoted on various dates from the date of his getting first eligibility without considering the name of the applicant. Thus, the applicant has claimed promotion from the date when his juniors were promoted on the post of Postman. The applicant initially filed Writ petition in the year 2004 before Hon'ble High Court after a delay of about five years from the date of his first eligibility i.e. on 16.11.1998. Thereafter, he continued to sleep over his case for the next seven years and finally filed withdrawal application in the year 2011 and the Writ petition was dismissed as withdrawn. Thereafter, the applicant filed modification application with a prayer to grant liberty to the applicant to file Original Application before this Tribunal, which too was rejected vide order dated 19.5.2011. The delay in approaching the Hon'ble High Court has not been sufficiently explained nor why he waited for another seven years and in the year 2011, he withdrew the Writ petition. It is also seen that the Hon'ble High Court in allowing the petition for withdrawal granted him no condonation of delay.

7. Section 21 of A.T. Act, which provides limitation, 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.

8. In the case of ***Union of India versus Harnam Singh (1993(2) S.C.C. Page 162)***, the Hon'ble Apex Court has held that the Law of Limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to aid of those who sleep over their rights and allow the period of Limitation to expire.

9. The delay and laches must be explained to the satisfaction of the Court for seeking condonation as held in the case of ***Bhup Singh versus Union of India & Ors. (1992 A.I.R. S.C. Page 1414)***. Section 21 of the Act, came up for consideration before the Hon'ble Apex Court in the case of ***Union of India & Ors. Versus M.K.Sarkar (2010(2) S.C.C. Page 58)***, wherein it has again been reiterated that limitation has to be counted from the date of original cause of action and decision on a belated representation would not revive the cause of action. **If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly grant of any relief on**

the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage of effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

10. *The Hon'ble Apex Court particularly in the case of S.S. Rathore v. State of Madhya Pradesh reported in 1990 SCC (L&S) 50* has held that un-successive representations cannot extend the period of limitation. The observations of Para 20 and 21 of the said judgments is reproduced herein 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.**

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Ac. 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."

11. In the case of *Administrator of Union Territory of Daman and Diu and others (Supra)* the Hon'ble Supreme Court has held as under: -

*J. Chandra*

"..... The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representation from time to time and as such the limitation would not come in his way."

12. In the case of same judgment the Hon'ble Apex Court has placed reliance of the case of ***Union of India v. M.K. Sarkar (JT 2009 (15) SC 70: 2010(2) SCC 58)*** and held as follows:-

"The order of the Tribunal allowing the first application of Respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. Xxxxx

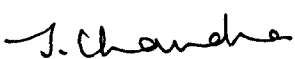
When a belated representation in regard to a 'stale' or 'dead' issue dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviewing the 'dead' issue or time barred dispute. 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 extended the limitation. Or erase the delay and laches.

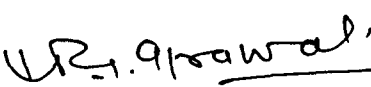
A Court or Tribunal before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of 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 does not expressly say so, that would be legal position and effect."

14.1 We are therefore of the view that the High Court ought to have affirmed the order of the Tribunal dismissing the application of the Respondent for retrospective promotion from 1976, on the ground of delay and laches.

**(emphasis added)**

13. In view of the aforesaid legal position, the O.A. is not maintainable on the ground of delay and latches. Accordingly O.A. is dismissed being barred by time. No costs.

  
(Ms. Jayati Chandra)  
Member-A

  
(Navneet Kumar)  
Member-J