

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

Original Application No. 461 of 2012

Reserved on 12.12.2014.

Pronounced on 19th December, 2014

Hon'ble Ms. Jayati Chandra, Member-A

Dr. Bhushan Lal Kaul, aged about 67 years, S/o late Tara Chand Kaul, R/o 10/43/2, Indira Nagar, Lucknow.

.....Applicant

By Advocate : Sri Y. Mishra

Versus.

1. Union of India through Secretary, Ministry of Mines, Government, New Delhi.
2. Deputy Director General, GSI, Northern Region, Aliganj, Lucknow.

.....Respondents.

By Advocate : Sri Deepak Shukla

O R D E R

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

“(i) direct the Opposite party no.2 to decide the representation of the applicant dated 7.11.2011 preferred by the applicant contained in Annexure no.1 to this Original Application by as speaking and reasoned order within the stipulated period and to refund the amount of Rs. 44,932/- to the applicant with interest.

(ii) pass any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(iii) Award the cost of the Writ petition of the applicant.”

2. The facts of the case, in brief, are that the applicant retired from service on attaining the age of superannuation on 31.7.2005 from the office of GSI, Northern Region, Lucknow. It is averred that prior to his retirement, one order with regard to pay fixation of the applicant was passed by the respondent no.2 on 30.4.2005 and in compliance thereof, the order dated 4.10.2005 was passed without giving any opportunity of hearing to the applicant and without considering the fact that the pay fixation order dated 18.9.2001 was passed after giving due consideration to the matter. In compliance of pay fixation order dated 4.10.2001, the

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applicant was regularly getting his salary till his retirement on 31.7.2005, but when he submitted an application for payment of his retiral dues, the respondent no.2 has implemented the order dated 20.5.2005 and 4.10.2005 and deducted a sum of Rs. 44,932/- from the gratuity of the applicant. Thereafter, the applicant preferred a representation dated 7.11.2011 followed by legal notice dated 30.7.2012, but nothing has been done, hence this O.A.

3. The respondents have raised preliminary objection regarding limitation by stating that the present Original Application is grossly barred by time as the alleged recovery was made in the year 2005 and the present O.A. has been filed after more than seven years. They have further stated that the applicant has slept over the matter and suddenly woke up on 7.11.2011 and made a representation to the respondents. Lastly, they have stated that the O.A. is liable to be dismissed being barred by time.

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. Heard the learned counsel for the parties and have also perused the pleadings on record.

6. Section 21 of A.T. Act reads as under:-

4. "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 -

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(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.

7. 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.

8. 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**

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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.

9. The Hon'ble Supreme Court in the case *Vijay Kumar Kaul and others Vs. Union of India and others* [Civil Appeal No. 4986-4989 of 2007] held as follows:-

"29. In Public Service Commission, Uttarakhand v. Mamta Bisht & Ors.[9] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: - "7. In Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar & Anr., AIR 1963 SC 786, wherein the Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order I, Rule IX of Code of Civil Procedure, 1908 (hereinafter called CPC) provide that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141, CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat; AIR 1965 SC 1153; Babubhai Muljibhai Patel v. Nandlal, Khodidas Barat & Ors., AIR 1974 SC 2105; and Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors. AIR 1987 SC 88). 8. In Prabodh Verma & Ors. v. State of U.P. & Ors. AIR 1985 SC 167; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors. (2009) 1 SCC 768 : (AIR 2008 SC (Supp) 824), **it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.**"

30. From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard.

31. Analysed on the aforesaid premised reasons, we do not see any merit in these appeals and,

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accordingly, they are dismissed with no order as to costs.”

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: -

“..... 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

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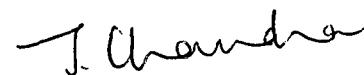
a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviewing the 'dead' issue or time barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not 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 extend 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 liable to be dismissed on the ground of delay and latches. Accordingly O.A. is dismissed being barred by time. No costs.



(Ms. Jayati Chandra)

Member-A

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