

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH.**

**ORIGINAL APPLICATION NO.:** 126 of 1999.

Dated this Monday, the 3rd day of July, 2000.

Kashinath Babusing Mahajan, Applicant.

Shri D. V. Gangal, Advocate for the  
applicant.

VERSUS

Union of India & Another, Respondents.

Shri R. R. Shetty for Advocate for  
Shri R. K. Shetty, the respondents.

**CORAM** : Hon'ble Shri Justice R. G. Vaidyanatha,  
Vice-Chairman.

Hon'ble Shri G. S. Tampi, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches  
of the Tribunal ?
- (iii) Library.

  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.

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Hon'ble Shri G. S. Tampi, Member (A).

Kashinath Babusing Mahajan,  
Residing at -  
Near Murliseth Mala,  
Near Flour Mill,  
Gangaram Plots,  
Bhusawal.

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Applicant.

(By Advocate Shri D. V. Gangal)

VERSUS

1. The Union of India through  
The Secretary,  
Ministry of Defence,  
New Delhi.

2. The General Manager,  
Ordnance Factory  
Bhusawal.

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Respondents.

(By Advocate Shri R. R. Shetty for  
Shri R. K. Shetty).


OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act. The respondents have filed reply. We have heard both the Counsel regarding admission. Since there is delay in filing the application, the applicant has also filed a M.P. No. 123/99 for condonation of delay.

2. The applicant had applied for the post of Darwan in the office of the second respondents. He was interviewed and call letter was issued on 10.10.1987 calling upon the applicant to

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come and fill up the necessary required forms. The applicant has responded to this notice but subsequently he did not receive any appointment order. The applicant has come to know that two of his colleagues who had appeared in the same test have been subsequently appointed. The applicant made number of representations but in vain. He also made a representation to the local M.L.A., who in turn got a reply from the administration stating that the applicant could not be appointed due to ban on recruitment. Then after making number of representations, the applicant has come up with the present application seeking a direction to respondents to appoint him to the post in question from the year 1987 or from the date when one of his colleague, has been appointed and for all consequential benefits.

3. The respondents in their reply have taken the stand that the application is barred by limitation and delay. Then on merits it is stated that in anticipation of sanction of post, selection was held and applicant was selected but however, since there was a ban on recruitment and no sanction order was received for relaxing the ban, the applicant could not be appointed. As far as other two candidates are concerned, the respondents have given some explanation which we will consider later.

4. After hearing both sides and perusing the materials on record, we find that the applicant was issued the letter dated 10.10.1987 informing about his selection and asking him to sign certain forms. We could presume that applicant could have waited for few months and then he should have taken legal steps to compel the administration to appoint him to this job. No doubt, the applicant has made some representations but sending repeated representation will not save limitation, as pointed out by the

Supreme Court in the case of Administrator of Union Territory of Daman & Diu and Others V/s. R. D. Valand reported in 1996 SCC (L&S) 205. The applicant got a cause of action after waiting for few months, when particularly he knew that two others have been appointed. He cannot go <sup>on</sup> waiting indefinitely for 12 years by sending repeated representations and then approach this Tribunal in 1999. We need not go into the question whether the panel ~~was~~ <sup>will be</sup> alive indefinitely, as contended by the applicant's counsel. When the applicant knew that he did not get an order of appointment within a reasonable time from 10.10.1987 or atleast when two of his colleagues got appointment, he should have approached a Court or Tribunal for getting appropriate relief.

The Learned Counsel for the applicant contended that Courts should be liberal in condoning the delay and placed strong reliance on the decision of the Supreme Court in the case of Collector of Land Acquisition, Anantnag & Another V/s. Mst. Katiji & Others reported in AIR 1987 SC 1353. No doubt, the Supreme Court has made some general observations that the Court should be liberal in condoning the delay. Even after laying down the general principles, the Supreme Court went into the facts of the case and found that there is sufficient cause for condonation of delay. That was a case where there was delay of only four days and the High Court had dismissed the appeal as barred by limitation. While laying down the general principle, the Supreme Court did not automatically allow the appeal. Even the delay was examined on facts and the Supreme Court found that there was some reason for delay and there was sufficient explanation for condoning four days delay. Therefore, ultimately the question of sufficient cause for condonation of delay is always a question <sup>of</sup> ~~on~~ facts, depending upon the facts and circumstances of the case.



5. In this case, there is a delay of twelve years in approaching the Tribunal. We are particularly concerned with service matters where matters cannot be left hanging for all times to come. In fact, the Supreme Court has observed that condoning delay will normally not affect others. But here, if the relief is granted and if the respondents are directed to appoint the applicant from 1987 and grant him all consequential reliefs, namely - that he should get appointment from 1987 and consequential reliefs, it may affect the seniority of others who have been appointed in subsequent years. It cannot be said that granting relief to the applicant will not affect others at all. Therefore, in the facts and circumstances of the case, we are constrained to hold that applicant has not made out any <sup>cause,</sup> ~~case,~~ much less sufficient cause, for condoning the inordinate delay of twelve years.

In this connection, we may refer to a decision of the Apex Court reported in 1999 SCC (L&S) 797.. Mitrangshu Roy Choudhary & Others V/s. Union of India & Others where an official has been appointed to a particular post and after some time, the appointment order was cancelled on the ground that the appointment order was in contravention of the policy decision of the Government. The Supreme Court stated that the action of the Government in cancelling the appointment, which was contrary to the policy decision, was right. But in our case, no appointment order has been issued to the applicant and he had only been selected. He had not been subsequently appointed. If the very selection itself is contrary to the policy decision of the Government banning recruitment, the applicant cannot insist that he must get an appointment order on the basis of such a selection.

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6. Even on merits we find that the applicant has no better case. This is a case where the applicant was called for selection in 1987. It is now brought on record that earlier there was a ban on recruitment issued by a Government order. The Learned Counsel for the applicant is right in his submission that respondents should not have initiated the selection process when there was a ban on recruitment. Though there was a ban on recruitment, it provides for lifting up the ban regarding certain posts on special requests made by the concerned department depending upon the exigency of service. Therefore, in the hope of getting sanction from the higher authorities, the administration went ahead with the selection process and accordingly, the applicant came to be selected. The respondents have made a statement that they did not receive any reply from the higher authorities for lifting up the ban and, hence, the applicant could not be appointed. Therefore, in the circumstances of the case, it cannot be said that respondents have committed any illegality in not appointing the applicant.

No doubt, the applicant has alleged that two other candidates who were with the applicant at the same time, have been appointed by the respondents. If this is the fact, then naturally it amounts to discrimination. But respondents have explained that as far as one candidate is concerned, he is not appointed in Bhusawal Factory, with which we are now concerned, but he has been appointed in Kirkee Factory. The said official is not a party-respondent here. The relevant facts pertaining to his appointment and the job in which he is appointment and the recruitment process pertaining to him are not brought on record. As far as the other candidate, Mr. A. N. Tayade is concerned, he



was not appointed for the post of Darwan. In this case, we are concerned about applicant's request for appointment to the post of Darwan. Respondents have brought on record that Government had lifted the ban <sup>Partially</sup> particularly in respect of Foreman Grade-II. Names of fresh candidates were sought from the Employment Exchange. Even the applicant was one of them. The applicant alongwith A. N. Tayade and others were interviewed and it was found that applicant was not suitable and A. N. Tayade was found suitable and accordingly, he came to be appointed. Hence, the applicant cannot have any grievance about Tayade's selection. The applicant has participated in the selection process and he even attended the interview but on merits, he was found not suitable and this was in 1989 and not in 1987. The applicant cannot be allowed to challenge Tayade's appointment as Foreman.

After going through the merits of the case, we do not find any merit in admitting the application.

7. In the result, the application is rejected at the admission stage. M. P. No. 123/99 is also rejected. No order as to costs.

(G. S. TAMPI)  
MEMBER (A)

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(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.