

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 724/93

29.9.99
Date of Decision:

K.N.S.Panicker

.. Applicant

Shri S.P.Saxena for Shri
Suresh Kumar.

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri Ravi Shetty for Shri
R.K.Shetty

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

D.S. Baweja
(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 724/93

Dated this the 29th day of Sept. 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

K.N.S.Panicker,
Senior Store Keeper,
Controllerate of Quality Assurance
(Ammunition), Kirkee, Pune.

... Applicant

By Advocate Shri S.P.Saxena
for Shri Suresh Kumar

V/S.

1. The Under Secretary,
Govt. of India,
Ministry of Defence,
South Block, DHQ PO,
New Delhi.
2. The Director General of
Quality Assurance,
Department of Defence
Production and Supplies,
Ministry of Defence,
South Block, New Delhi.
3. The Controllerate of Quality
Assurance (Ammunition),
Kirkee, Pune.
4. The Senior Quality Assurance
Officer, Senior Quality
Assurance Establishment
(Ammunition), Ammunition
Factory, Kirkee, Pune.

... Respondents

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

O R D E R

(Per: Shri D.S.Baweja, Member (A))

The applicant was initially appointed as Storeman Technical in lieu of combatant in Defence unit known as 104 Engineer Regiment (Mountain) C/o 99 APD on 30.7.1966. After 4 months he was reclassified as Store Clerk in an existing vacancy in that unit itself in the basic pay of Rs.110/- in the pay scale of Rs.110-180 in public interest. Although the applicant was reclassified as Store Clerk, he has contended that his duties and responsibilities continued to remain the same. Thereafter, working upto 29.8.1968, the applicant was permanently transferred in public interest to Respondent No. 4, i.e. Inspectorate of Armaments, Kirkee, Pune which is now known as Senior Quality Assurance Establishment (Ammunition) (SQAE(A)), Kirkee, Pune. The applicant reported for duty in this establishment on 9.9.1968 after availing joining time as allowed to him. The name of the applicant was struck off the strength including Ration strength of previous unit 104 Engineer Regiment (Mountain). There was no break in service and the applicant was absorbed against the existing vacancy of Storeman w.e.f. 30.8.1968. Subsequently, he was redesignated as Civilian Assistant Store Keeper. The applicant had represented that he is entitled for counting seniority from the date of appointment, i.e. 30.7.1966 by counting service of

O R D E R

(Pet: Shri D. S. Sawale, Member.)

The applicant was initially appointed as Storeman Technical in lieu of combatant in Defence unit known as 104 Engineer Regiment (Mountain) C/o 99 VPO on 30.7.1966. After 4 months he was reclassified as Store Clerk in an existing vacancy in that unit itself in the basic pay of Rs. 110/- in the pay scale of Rs. 110-180 in public interest. Although the applicant was reclassified as Store Clerk, he has contended that his duties and responsibilities continued to remain the same. Thereafter, working upto 22.8.1966 the applicant was permanently transferred in public interest to Respondent No. 4, i.e. Inspector of Armaments, Kiche, Pune which is now known as Senior Quality Assurance Establishment (Ammunition) (Q455(1)), Kiche, Pune. The applicant reported for duty in this establishment on 2.9.1966 after availing joining time as allowed to him. The name of the applicant was struck off the strength including Reason strength of previous unit 104 Engineer Regiment (Mountain). There was no break in service and the applicant was absorbed against the existing vacancy of Storeman u.s.r. 30.8.1966. Subsequently, he was redesignated as Civilian Assistant Store Keeper. The applicant had represented that he is entitled for counting seniority from the date of appointment, i.e. 30.7.1966 by counting service of

full two years instead of only one year. The applicant submits that his service book was sent to Respondent No. 2, i.e. Director General of Quality Assurance, New Delhi and his service book was returned with the letter dated 24.2.1970 wherein it was stated that the applicant's date of seniority should reckon from the date he continuously started drawing more than the minimum of his present grade under Army Instructions AI241/50. However, inspite of this clarification, the applicant was not allowed seniority of two years of service but instead only one year of his past service ^{has been considered} and allowed seniority from 30.7.1967. The applicant thereafter had been making several ^{count} representations for allowing the entire service to ~~for~~ the seniority from the initial appointment, but got ^{been} response only by letter dated 7.1.1992 wherein his claim for seniority ^{has} ~~has~~ been rejected. The applicant ^{on} thereafter again sent a reminder dated 23.6.1993 and ~~not~~ receiving any further reply agitated the matter for seeking legal remedy by filing the present OA. on 19.7.1993 seeking the following reliefs :- (a) to direct the respondents to count full two years of service rendered continuously in the previous Defence unit for seniority as Storeman/Civilian Assistant Store Keeper and accordingly to grant the consequential benefits.

(b) The applicant has been promoted as Senior Store Keeper from 23.3.1982 and has now become due for promotion to the next higher post of Stores Superintendent in the near future and therefore he has made a prayer that respondents be directed to keep one post of Store Superintendent unfilled pending final order in the present OA.

2. The main case of the applicant is that he is entitled for seniority by counting his past service as per Army Instruction No. 241/50 as amplified as per Ministry of Defence letter dated 4.12.1959 as the nature of duties attached to his previous post and the present post are similar and in the same pay scale. The applicant also submits that his case is covered by the judgement of High Court of Karnataka in W.P.15219/91 & 15220/91 dtd.30.3.82.

3. The respondents have filed the written statement opposing the application. The respondents submit that the applicant was initially appointed on 30.7.1966 as Storeman Technical against a vacancy which was meant for service personnel, i.e. an appointment in lieu of combatant. Accordingly, when the combatant was available to fill up the post, the applicant became surplus. Since the vacancy of Store Clerk was available in the same Unit, the applicant was reclassified and absorbed as Store Clerk as per his willingness to avoid termination. The respondents contend that the Storeman and Store Clerk are not identical posts although the Unit was the same.

In view of this, the contention of the applicant that even with reclassification as Store Clerk from 3.12.1966, he remained Storeman is not tenable. The respondents further add that the applicant became surplus in 1968 and was liable to be terminated. However, to avoid his termination, the applicant was transferred permanently to Respondent No. 4 on 9.9.1968. As per the extant rules, the applicant was allowed seniority under Respondent No. 4 from 30.7.1967. The applicant had made representation against the same and the same was considered and he was given a reply dated 24.2.1970 rejecting his claim. The respondents submit that the seniority has been correctly allowed to the applicant in terms of Army Instruction No. 241/50. The respondents have strongly opposed the application as being barred by limitation and also not within the jurisdiction of the Tribunal, on account of the fact that the representation of the applicant with regard to seniority had been rejected on 24.2.1970 and thereafter he was promoted as Store Keeper from 31.3.1982 but did not raise the issue. The applicant kept quiet after his first rejection in 1970 and thereafter ^{from 1988} went on sending repeated representations to revive the issue with the intention to bring the present OA. within the limitation period.

4. The applicant has filed a rejoinder reply contesting the averments of the respondents in the written statement and reiterating his grounds in the OA.

The applicant while contesting the submission of the respondents with regard to OA. being barred by limitation has stated that the OA. filed is within the limitation period ^{issue} because the ~~the~~ with regard to his seniority was still in dealing with the department as will be seen from the letters dated 7.1.1992 and 7.5.1992 brought on record at Annexure-'A-5'. The applicant has cited several judgements of the Tribunal to support his contention that if the respondents choose to consider the representation of the employee on merits afresh, then the limitation period has to run from the date the matter has been re-examined by the department.

5. We have heard the arguments of Shri S.P.Saxena for Shri Suresh Kumar, learned counsel for the applicant and Shri R.R.Shetty on behalf of Shri R.K.Shetty, learned counsel for the respondents.

6. Before going into the merits of the claim made by the applicant, we will go into the issue of limitation and jurisdiction of the Tribunal as the respondents have strongly opposed the present OA. on these grounds. From the details brought out by the respondents, it is noted that the applicant was permanently transferred under Respondent No.4, i.e. Senior Quality Assurance Officer, Pune from 9.9.1968. He was originally appointed on 30.7.1967 as Storeman (Technical) in lieu of the Combatant in Defence unit known as 104 Engineer Regiment(Mountain). The applicant was allowed seniority ^{previous} w.e.f.30.7.1967, i.e. counting one year of ~~the~~ service. The claim of

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the applicant is that he is entitled for seniority by counting the full service of two years from 30.7.1966. The applicant represented for the same. After considering this representation, the respondents rejected the claim of seniority from the date of appointment as per letter dated 24.2.1970. Thereafter, the applicant again represented on 29.4.1970 and the same was again rejected as per letter dated 12.6.1970. Thereafter the applicant was promoted as Senior Store Keeper w.e.f. 31.3.1982. The present OA. has been filed on 19.7.1993. The respondents have contended that the OA. is barred by limitation as the cause of action arose first when he was allowed seniority from 30.7.1967 and secondly when his representation against the same had been rejected as per letter dated 24.2.1970. The respondents have further stated that after 1970 the applicant had kept quiet for several years and only in October, 1988 he made a representation regarding seniority. Thereafter, he has been repeatedly representing. The respondents contend that the applicant has been making repeated representations with a view to bring the present application within limitation. The respondents submit that repeated representations cannot extend the limitation and the limitation has to be reckoned from the date of cause of action when arose in 1970. The applicant, on the other hand, has contested the submission of the respondents with regard to limitation stating that after his representations after 1988 onwards, the department had undertaken to examine his case on merits as will be seen from the letters dated 7.1.1992 and 7.5.1992 at Annexure-'A-5' and 23.6.1993 at Annexure-'A-7'. The applicant has been following up

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with the respondents for early decision on his representations. The applicant's stand is that since the respondents have undertaken reconsideration of his case on merits, the limitation has to be reckoned from the date the respondents have reconsidered the case of the applicant. The applicant, therefore, contends that the present OA. filed in 1993 is not barred by limitation. The applicant, as indicated earlier, has cited several orders of the Tribunal as well as ~~one~~ judgement of the Hon'ble Supreme Court in the rejoinder reply to make out a case that the present OA. is not barred by limitation. The cited orders of the Tribunal are as under :-

- (a) Laxman Doss vs. Union of India, ATR 1988(1) CAT 375.
- (b) Satyanand Sinha vs. Union of India, 1989(4)SLJ(CAT)272.
- (c) B. Kumar vs. Union of India, ATR 1988(1) CAT 1.
- (d) Har Binderlal vs. Controller & Auditor General of India, 1988 (7) ATC 567.
- (e) A.N. Gambhir vs. Secretary, Ministry of Water Resources 1988 (8) ATC 249.

The cited judgement of the Hon'ble Supreme Court is as under :-

A. Sagayanathan & Ors. vs. Divisional Personnel Officer,
S.B.C. Division, Southern Railway, Bangalore,
1992 (21) ATC 126.

7. Out of the cited orders as detailed above, except in the case of Laxman Doss, in all other orders it is held that series of representation will not save limitation, ^{but} it is also well

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established that after the rejection of the representation if the department concerned chooses to entertain ^{then} a further representation and rejects the same on merits, ^{then} the period of limitation will start afresh from the date of rejection of last representation. In the case of Laxman Doss vs. Union of India(supra), the Bench of the Tribunal has taken a view that under Section 19 of the Act, the Tribunal has the power to condone the delay in making of an application on sufficient cause being made out by the applicant. The Bench has referred to the judgement of the Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag vs. Mst. Katiji, AIR 1987 SC 1353, wherein the Hon'ble Supreme Court has laid down the guidelines for deciding the question of condonation of delay. What is held in this order will be deliberated upon when the recent judgements of the Hon'ble Supreme Court on the issue of limitation are referred to.

As regards the reliance on the judgement of the Hon'ble Supreme Court in the case of A. Sagayanathan & Ors., on going through this judgement carefully, we find that on the facts and circumstances of the present case, the ratio of what is held in this judgement does not apply to the case of the applicant. In this judgement, the issue involved ^{was} not with regard to seniority but with regard to promotion. The appellant had alleged that he had been over-looked in the promotion and juniors had been promoted. The Hon'ble Supreme Court has held that since the appellants had been superseded, they have a cause of action even

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if late and the Tribunal should have gone into merits. In the present case, the issue involved is with regard to allotment of seniority to the applicant in 1966 and not a case of supersession of the applicant. In fact, the applicant had been promoted based on his seniority from 30.7.67 in 1982 and applicant neither represented against the same nor sought any legal remedy. It is our considered view that ratio of what is held in the judgement of the Hon'ble Supreme Court does not come to the rescue of the applicant.

8. Now coming to what is held by the various Benches in the orders cited by the applicant that if the Department chooses to reconsider the matter on merits after earlier rejection, the limitation is to run from the date the rejection of the claim has been done after reconsideration of the matter. We find that this view is not supported by the Hon'ble Supreme Court. In several recent judgements, their Lordships have held that the limitation has to be reckoned from the date of initial rejection of the representation and not with reference to the subsequent representations and rejection if any. Some of these judgements are cited and reviewed as follows :- (a) Gian Singh Mann vs. High Court of Punjab & Haryana & Anr., 1980 SCC (L&S) 527. In this case, the writ was filed in the Court in 1978 after a period of 11 years seeking promotion from 1966. The appellant had been making repeated representations during the period. Hon'ble Supreme Court did not accept his contention for explaining delay and their Lordships have observed in para 3 as under :-

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"The writ petition was filed in this Court in 1978, about eleven years after the dates from which the promotions are claimed. There is no valid explanation for the delay. That the petitioner was making successive representations during this period can hardly justify our overlooking the inordinate delay. Relief must be refused on that ground."

(b) S.S.Rathore vs.State of Madhya Pradesh, (1989) 11 ATC 913.In this case , the Constitution Bench of the Hon'ble Supreme Court has gone into the issue of limitation with reference to Sections 20 and 21 of the Administrative Tribunals Act,1985 in respect of cause of action arising in case of punishment order issued through the disciplinary proceedings. The Hon'ble Supreme Court has held that "the cause of action first arises when the remedies available to the public servant under the relevant Service Rules as to redressal are disposed of." However, this principle does not apply when the remedy available has not been provided for by the law. The repeated unsuccessful representations not provided ^{are} by law ^Lalso not governed by law. In this connection, we refer to para 20,where the Constitution bench recorded its observations 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."

It ~~necessarily~~^{flows from} law laid down by the Apex Court that the decision or appeal not provided^{for} under the service law/rules would neither revise the limitation nor give the applicant a fresh cause of action. (c) Administrator of Union Territory of Daman and Diu & Ors. vs. R.D.Valand, 1995(8) SLR 616. In this case, the respondent in the SLP submitted a representation in 1985 requesting the administration to consider him for promotion from 1977 when some persons juniors to him are alleged to have been promoted. The representation was rejected by an order dated 8.10.1986. Thereafter, he made several representations and they were also rejected. Finally, in March, 1990 the respondent filed the OA. before the Tribunal. The Tribunal allowed the relief to the respondent, i.e. the applicant in the OA. The matter came^{up} in appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court set aside the order of the Tribunal stating that Tribunal was not justified in interfering with the stale claim of the respondent. It would be relevant to reproduce the extract of para 4 of this judgement as under :-

" We are of the view that the Tribunal was not justified in interfering with the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28.9.1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8.10.1986. Thereafter, for four years the respondent did not approach any court and finally he filed the present application before the Tribunal in March 1990. In the facts and circumstances of this case, the Tribunal was not justified in putting the clock back by more than 15 years. The

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

On review of the above referred judgements of the Hon'ble Supreme Court, it is noted that the Hon'ble Supreme Court has laid down the law that repeated representations cannot extend the limitation and the delay has to be explained from the date the cause of action arose. If repeated representations are made and if one or more representations are replied by the respondents, it will not mean that the limitation period will extend from the date when the matter has been ^{re}considered and a reply sent. In view of what is held by Hon'ble Supreme Court, we are of the considered opinion that the ratio of the ^{of the Tribunal} ~~orders~~ cited by the applicant is not in line with the law laid down by the Hon'ble Supreme Court.

9. It is well settled that in service matters the question of seniority should not be re-opened after the lapse of reasonable time as any change in seniority allowed after lapse of several years will disturb the settled position which is not justicial. In this connection, we seek the support from the law laid down by the Hon'ble Supreme Court in the following judgements :- (a) P.S.Sadasivaswamy vs. State of Tamil Nadu, AIR 1974 SC 2271. In this case, the appellant approached the High Court through a writ petition challenging the promotion of the juniors after 14 years from the arising of the cause of action.

The Hon'ble High Court dismissed the petition and the matter was taken before the Hon'ble Supreme Court in an appeal. The Hon'ble Supreme Court in para 2 of the judgement while dismissing the appeal has observed as under :-

"....But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

(b) R.S.Makashi & Ors. vs. I.M.Menon & Ors., 1982 SCC(L&S)77.

In this case, the petitioner challenged the seniority principles laid down in the Government resolution dated 22.3.1968 and the gradation list dated 18.11.1975 and 27.11.1975 by filing the Writ Petition in 1976. The respondents raised the preliminary objection that the Writ should be dismissed on the preliminary ground of delay and laches in as much as it seeks to disrupt the vested right regarding the seniority, rank and promotions which had accrued to large number of employees during the intervening period since the passing of the Resolution in March 1968. The Hon'ble High Court, however, over-ruled this objection. The Hon'ble Supreme Court has not supported the action of the Hon'ble High Court stating that High Court was wrong in ignoring the preliminary objection of delay and laches. It is held that the High Court ought to have rejected the Writ on the ground of delay and laches which sought to disrupt the vested right regarding seniority and promotion as per the seniority principles laid down in March, 1968.

(c) S.P.Duggal vs. State of Himachal Pradesh & Ors., 1993(23) ATC 358. In this case, the OA was filed before the Tribunal challenging the seniority list which was finalised in 1979. The OA was allowed by the Tribunal. The Hon'ble Supreme Court, however, has not upheld the order of the Tribunal in the SLP stating that Tribunal ought to have not disturbed the seniority position after such a long gap of time when the respondents have not challenged before when the same was finalised in 1979. (d) Prakash K. and Anr. vs. State of Karnataka & Ors., 1997 SCC (L&S) 482. In this case, while upholding the decision of the Tribunal for dismissing the OA on account of delay and laches, in SLP, the Hon'ble Supreme Court has observed in para 3 as under :-

" The cause of action arose when the select list was prepared which they knew as unconstitutional even as early as on 17.11.1993. This apart, we are of the firm view that the limitation provided under Section 19 of the Administrative Tribunals Act, 1985, does not come in the way of exercising our discretion and reject an application, if the application suffers from laches. This is the view we have already taken in Nagaraja v. Director General and Inspector General of Police. This Tribunal cannot act mechanically and grant the relief only on the ground that an applicant has approached this Tribunal within one year of the cause of action and he has made out a good case on merits, ignoring the realities and the effect of the relief on the administration and private parties. This Tribunal cannot shut its eyes to the inconvenience and injury that would result to the private respondents who have joined the service already."



(e) B.S.Bajwa & Anr. vs.State of Punjab & Ors.,1998 SCC (L&S) 611. In this case, the appellants joined service in 1971 and 1972 and only in 1984 filed a writ petition challenging their seniority allowed to them at the time of appointment. The Hon'ble Supreme Court has observed in para 7 as under :-

"It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

(f) Ratam Chandra Sammant & Ors. vs. The Union of India & ors.,1993 (2) SLR 811 (S.C.). Their Lordships in this judgement have held that the delay itself deprives a person of his remedy available in law. In the absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. (g) Union of India vs. Harnam Singh, 1993 SCC (L&S) 375. In this judgement the Hon'ble Supreme 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 the aid of those who sleep over their rights and allow the period of limitation to expire.

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10. Looking at the facts of the case and keeping in view the law laid down by the Hon'ble Supreme Court with regard to limitation and delay and laches, we hold that the present OA. deserves to be dismissed on the ground of limitation and delay and laches alone. As brought out earlier, the cause of action first time arose in 1968 when the applicant was allowed seniority by counting only one year of his previous service. Thereafter, the applicant made a representation against the seniority allowed to him and the same was rejected in 1970. The applicant was also promoted as Senior Store Keeper in 1982 and he did not make any representation about his seniority. From the details of the representations made, it is noted that the applicant kept quiet from 1970 till 1988 when he represented again and then followed by reminders. Though the applicant has brought out details of internal ^{Correspondence} ~~notings~~ on the record, but we do not find on record any reply given to his representation. In fact, the impugned orders at Annexure-'A-5' have not been addressed to the applicant. We therefore fail to appreciate as to how A-5 has given the fresh cause of action to the applicant. It is further noted that the applicant has filed the present OA. only at the time when the applicant felt that he was due for promotion to the next post. These facts adequately bring out that the present application suffers from delay and laches as well as being barred by limitation counting the limitation period from the date his first

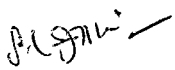
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representation had been rejected in 1970. Further, if the relief is allowed to the applicant, it will upset the entire seniority list of Store Keeper as well as Senior Store Keeper after several years. In view of these facts and the law laid down by the Hon'ble Supreme Court in the above cited judgement, the present OA. is not maintainable and deserves to be dismissed.

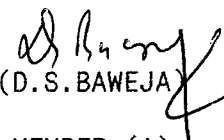
11. The respondents have also taken a plea that the present OA. is beyond the jurisdiction of the Tribunal in view of the fact that the cause of action arose in 1968. We are inclined to endorse the contention of the respondents. The applicant has prayed for seniority counting his entire period of previous service and therefore cause of action has arisen first time in 1968 and then in 1970. As per the provisions of Section 21 of the Administrative Tribunals Act, 1985, all the matters where the cause of action arose earlier to 3 years from the constitution of Tribunal in November, 1985 will be beyond the jurisdiction of the Tribunal. Even on this ground also the present OA. is not maintainable.

12. Since we have recorded our findings that the present OA. deserves to be dismissed on account of delay and laches, being barred by limitation and beyond the jurisdiction of the Tribunal, we do not propose to go into the merits of the other contentions raised by the applicant.

13. In the result of the above, the OA. deserves to be dismissed and is accordingly dismissed with no order as to costs.


(S.L.JAIN)

MEMBER (A)


(D.S. BAWEJA)

MEMBER (A)

mrj.