

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

17.10.2014


OA No.291/00567/2014 with MA 291/00411/2014

Mr. Sultan Singh, Counsel for applicant.

Heard the learned counsel for the applicant.

ORDER RESERVED.


(Dr. Murtaza Ali)
Member (J)


(Anil Kumar)
Member (A)

19/11/14 *about*
order pronounced
today in the
open court by
S.B. S.
19/11/14
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 291/00567/2014

With

MISC. APPLICATION No. 291/00411/2014

ORDER RESERVED ON 17.10.2014

DATE OF ORDER : 19.11.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE DR. MURTAZA ALI, JUDICIAL MEMBER

H.S. Verma son of Late Shri Mohan Lal Verma, aged about 65 years, resident of Bunkar Mohalla, Village & Post Achrol, District Jaipur (Rajasthan). Retired as Grade IV Officer of Indian Corporate Law Service, Ministry of Corporate Affairs, Shastri Bhawan, New Delhi.

... Applicant

(By Advocate: Mr. Sultan Singh)

Versus

1. Union of India through its Secretary, Ministry of Corporate Affairs, A Wing, 5th Floor, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi -110001.
2. Shri Puran Chand, Officer Grade IV (since retired), Plot No. 7, Matrai Apartment, Mayur Vihar, Phase No. 1, Delhi- 110091.

... Respondents

(By Advocate: -----)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed the present OA praying for the following reliefs:-

- "(a) That by appropriate order, direction, mandate it be declared that the impugned seniority list dated 05.12.1996 (Annexure A/1) and seniority dated 08.04.2004 (Annexure A/2) are arbitrary, illegal, capricious against the material on record and be quashed and set aside.
- (b) That it be declared that humble applicant is legally entitled to be promoted to Grade IV (STS) w.e.f. the date Shri Puran Chand was promoted as such with all consequential benefits.

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- (c) That it be declared that humble applicant is entitled to get interest on arrear amount alongwith @ 12% p.a. from the date it became due and till the date it is paid to him.
- (d) Any other relief which the Hon'ble Tribunal thinks just and proper in the circumstances of the case in favour of the humble applicant may also be allowed.
- (e) Cost of the OA be awarded to humble applicant."

2. By way of this OA, the applicant seeks revision in seniority list dated 05.12.1996 (Annexure A/1). In this seniority list, the name of private respondent no. 2, Shri Puran Chand, is at sr. no. 22 and the name of the applicant is at sr. no. 30. Thus it is clear that the applicant seeks revision in the seniority list after 18 years. As per Section 21 of the Administrative Tribunal's Act, 1985, the 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 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."

3. Thus the present OA has been filed after a considerable delay. We have carefully perused the MA No. 291/00411/2014 filed for condonation in delay in filing the OA. We are not satisfied with the reasons recorded in the MA for condonation of delay. According to the applicant, he not only filed a representation to correct the seniority but also submitted several reminders but his representations i.e. on 19.09.2008,

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24.11.2008, 04.01.2011, 06.06.2012, 25.10.2012 and 28.06.2014 (Annexure A/10 of the OA) but no reply was sent to the applicant. However, law is well settled that repeated representations do not extend the period of limitation. Even reminders were sent after 12 years of the publication of seniority list dated 05.12.1996. Therefore, the applicant has not been able to satisfy the Tribunal that he has sufficient cause for filing the present OA with considerable delay. Thus we do not find any merit in the MA for condonation of delay in filing the OA.

4. The Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India & Others** decided on 07.03.2011 [Petition for Special Leave to Appeal (Civil) 7956/2011] held that:-

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:-

"21. Limitation.-

- (1) A Tribunal shall not admit an application,-
 - (a) in a case where a final order such as it 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.

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(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."

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clause (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

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5. The Hon'ble Supreme Court in the case of **P.S. Sadasivaswamy vs. State of Tamil Nadu**, AIR 1974 SC 2271, observed as-

"Where a Government servant slept over the promotions of his juniors over his head for fourteen years and then approached the High Court with writ petition challenging the relaxation of relevant rules in favour of the juniors, the writ petition is liable to be dismissed in limine. Such an aggrieved person shall approach the Court at least within six months or at the most a year of promotion of his juniors.

It is not that there is any period of limitation for the Courts to exercise their powers under Art. 226, nor is it that there can never be a case where the Courts can not interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Art. 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 un-settle settled matters."

6. The Hon'ble Supreme Court in the case of **Union of India & Others vs. M.K. Sarkar**, 2010(1) SCC (L&S) 1126 has held that when a stale or dead issue/dispute is considered and decided, date of such decision cannot furnish a fresh cause of action for reviving dead issue or time barred disputes. The issue of limitation or delay and latches has to be considered with reference to original cause of action and not with reference to day on which the order is passed in compliance with the Court's directions.

7. Further the Hon'ble Supreme Court in the case of **Chennai Metropolitan Water Supply and Sewerage Board & Others vs. T.T. Murali Babu**, Civil Appeal No. 1941 of

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2014, AISLJ 2014 (2) 26 vide order dated 10.02.2014 in Para No. 16 has held that :- ,


"16. Thus, the doctrine of delay and latches not be lightly brushed aside. A writ Court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional Court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and latches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does not bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the Court, yet the writ Court chose not to address the same. It is the duty of the Court to scrutinize whether such enormous delay is to be ignored without any justification. That part, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A Court is not expected to give indulgence to such indolent persons – who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

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8. Thus in view of the law settled by the Hon'ble Supreme Court, we are of the view that the applicant has not been able to make out a case for condonation of delay in the present OA. Therefore, the MA for condonation of delay is dismissed. Accordingly, the OA is also dismissed being filed beyond the period of limitation.

9. Thus the OA as well as MA are dismissed at the admission stage itself. The Registry is directed to send a certified copy of this order to the respondents.


(DR. MURTAZA ALI)
MEMBER (J)


(ANIL KUMAR)
MEMBER (A)

Abdul