

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>01.05.2009</u></p> <p><u>OA No. 107/2009 with MA 115/2009</u></p> <p>Mr. S.C. Sethi, Counsel for applicant.</p> <p>Heard learned counsel for the applicant.</p> <p>For the reasons dictated separately, the MA as well as OA are dismissed.</p> <p> (B.L. KHATRI) MEMBER (A)</p> <p> (M.L. CHAUHAN) MEMBER (J)</p> <p>AHQ</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 01st May, 2009

ORIGINAL APPLICATION NO. 107/2009

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Bhagwan Lal Dubey son of Shri Late Shri Kalyan Prasad Dubey aged 76 years retired Assistant Commercial Clerk posted at Agra Fort, Kota Division of the Western Railway. At present residing at Sanik Nagar, Karamchari Colony, Gangapur City, District Saawaimadhupur.

.....APPLICANT

(By Advocate: Mr. S.C. Sethi)

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. General Manager, West Central Railway, Jabalpur (MP).
3. Divisional Railway Manager, Western Central Railway, Kota Division, Kota.
4. Sr. Divisional Commercial Manager (Estt.), West Central Railway, Kota Division, Kota.

.....RESPONDENTS

(By Advocate : -----)

ORDER (ORAL)

When the matter was listed on 22.04.2009, this Tribunal after giving time to the learned counsel for the applicant has passed the following order:-

"The applicant has filed this OA thereby praying for the following relief:-

- i) That the applicant on his reinstatement is entitled to promotion w.e.f. 16.2.87 when his juniors were promoted to the scale of 1200-2040 and the applicant was passed over on the ground of criminal proceedings which ended in acquittal.
- ii) That the applicant may be allowed the difference of arrears of pay on the basis of the promotion and other retiral benefits accordingly.
- iii) That the applicants pension may kindly be ordered to be fixed and arrears may be allowed treating the applicant promoted on 16.2.87

and pay which he would have drawn had he not been passed over on account of criminal case."

From the relief clause, it is evident that main case of the applicant is regarding his promotion w.e.f. 16.2.87 and he is seeking pension based upon grant of said promotion. Admittedly, cause of action in favour of the applicant had arisen in the year 1991, when he was reinstated in service.

The Apex Court in the case of **Secretary to Govt. of Punjab and Others vs. Ajit Singh and others** [1999 SCC (L&S) 1322] has categorically held that in the case of promotion there is only one time cause of action and it cannot be said to be a continuous cause of action and has to be challenged within the prescribed period of limitation.

Further, the Apex court in the case of **C. Jacob vs. Director of Geology & Mining & Anr.** [JT 2008 (11) SC 280] has held that; Representation filed after 18 years – representations concerning stale matter or those barred by limitation may be rejected on that ground alone without examining merits and need not be replied.

In view of law laid down by the Apex Court, we are of the view that this is a case which requires rejection at the threshold and the ratio laid down by the Apex Court is squarely applicable in the instant case.

Learned counsel for the applicant, however, seeks adjournment to argue the matter and prays for one week's time.

Let the matter be listed on 1.5.2009."

2. Realizing that the OA is not within the period of limitation in terms of law noticed in the order dated 22.04.2009, now the applicant has filed Misc. Application for condonation of delay. The ground taken by the applicant for condonation of delay is that he was making repeated requests to the authorities concerned to grant him the benefit of promotion and assurance was also given to him that decision in the matter will be taken earlier. Since the decision was not taken up earlier and now representation has also been rejected by the respondents vide order dated 19.12.2008 as such delay in serving the representation and OA be condoned. At this stage it will be useful to quote Para No. 11 to 14 of the MA where the applicant has given explanation/ground for filing the OA at this belated stage, which thus reads as under:-

"11. That the applicant whenever he went to Kota repeatedly requested the DCS and other authorities personally for granting the benefit of promotion which was deferred and fixation of pay and pension accordingly. In turn the authorities on the pretext that the applicants case was old and it will take time, assured the applicant that early decision will be taken."

12. That because the applicant is not a resident of Kota it was not possible to chase up the matter every day, and he had to contend on the assurances.

13. That the applicant had already suffered the harassment of litigation and expenditure incurred in the legal proceedings. He was thus always of the view to save himself from litigation and therefore did not litigate against the Railway for promotion, fixation of pay and pension and remained on the assurances of the authorities.

14. That finding no alternative the applicant submitted written representation by registered post which has been rejected on 14.12.2008."

3. We have heard the learned counsel for the applicant at length. The question which requires our consideration is as to whether the applicant has made out a case for condonation of delay at this highly belated stage in view of the explanation as projected in Para 11 to 14 as reproduced above. Law on the point is no longer res integra. The Apex Court in the case of **Administrator, Union Territory of Daman and Diu vs. R.D. Valand** [1996 SCC (L&S) 205] has held that the Tribunal was not justified in putting the clock back by more than 15 years by condoning the delay. That was a case where cause of action arose in the year 1972, the respondent slept over the matter till 1985 when he made representation. The said representation was rejected. Thereafter for four years the respondent did not approach any Court and finally he filed an application before the Tribunal. It was under these circumstances, the Apex Court had held that Tribunal was not justified in putting the clock back for more than 15 years. Similarly in **State of Karnataka vs. S.M. Kotrayya** [1996 SCC (L&S) 1488], the Apex Court has held that it was not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) or (2) of Section 21 of the Administrative Tribunal's Act, 1985 but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. Thus in view of the law down by the Apex Court, as noticed above, the question which requires our consideration is whether the applicant has given a satisfactory explanation for condonation of delay. As can be seen from the grounds as projected

above, the explanation given by the applicant is that he was pursuing the matter before the authorities and he was assured that decision will be taken at an early date. Ultimately he filed a representation dated 04.04.2008, which was rejected vide order dated 19.12.2008 (Annexure A/1). As can be seen from order dated 19.12.2008, representation for the first time was made by the applicant on 04.04.2008 almost 17 years after when the cause of action has arisen in favour of the applicant when he was reinstated in service. According to us, this self serving statement made by the applicant that he was continuously making requests to the authorities concerned and assurance was given to him that his case shall be decided at an early date will not ^{be} construed sufficient ground for condoning the delay. The applicant has also not given the name of the authorities who has given him such assurance and whether was competent to give such assurance. For the first time, the applicant has made the representation on 04.04.2008 after a lapse of 17 years. Thus according to us, the applicant has not made out any case for condoning the delay in filing the OA and this MA for condonation is required to be rejected as no direction can be given to the department to consider stale claim when no satisfactory explanation has been given why representation was made after a period of 17 years when cause of action has arisen in favour of the applicant. Further, it is also a well settled law that that rejection of the representation at later stage will neither give fresh case of ^{action} nor Court should give direction to decide the representation or to decide the stale claim where the issue does not survives. Thus according to us, the applicant has not made out any case for condonation of delay.

4. Learned counsel for the applicant has drawn out attention to the decision of the Hon'ble Supreme Court in the case of **Union of India & Others vs. Tarsem Singh** [2008 (8) SCC 648 and another decision of the Apex Court in the case of **M.R. Gupta vs. Union of India & Others** [1995(31) ATC 186 to contend that this being a subsisting claim, as such limitation will not apply.

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5. We have given due consideration to the submission made by the learned counsel for the applicant. We are of the view that the authorities cited by the learned counsel for the applicant is not applicable in the facts & circumstances of this case. In **M.R. Gupta** case, the Hon'ble Supreme was considering the case where the applicant was entitled to enhanced pensionary benefits as his pension was wrongly fixed on account of wrong fixation of pay. The case in hand is not of such nature. It is not the case of the applicant that the pay has not been correctly fixed on the post from which he retired, thus resulting into the drawal of less pensions. The case of the applicant is that he should be promoted against the higher post and in case promotion is granted, he shall also be entitled to consequential benefits including enhanced pension. Thus it is not a case of continuous wrongs, recurring/successive wrongs. Further the Apex Court in the case of **Tarsem Singh** has specifically stated that normally belated service related claim should be rejected on the ground of delay and latches (where remedy is availed by way of writ petition) or limitation (where remedies is sought under Administrative Tribunal's Act). One of exception ^{u/t} to said rule is cases relating to continuing wrong. The exception however does not apply where interest of a third party, as in the case of seniority or promotion, are affected. Thus we fail to understand how the decision rendered by the Apex Court in the case of Tarsem Singh is of any assistance to the applicant, rather it demolish the case of the applicant. At this stage it will be useful to quote Para No. 7 of the Judgment which thus reads:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and latches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several other also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of latches/limitation will be applied.....” (Emphasis to underline).

6. In this case applicant is claiming promotion w.e.f. 16.02.1987 when his junior was promoted in the scale of Rs.16.02.1987 on ad hoc basis but he was not granted promotion because a departmental proceeding for major penalty was pending. As can be seen from Annexure A/6, such ad hoc promotion was granted subject to the condition that such employee will have to pass the Suitability Test. Admittedly, the applicant has not passed any Suitability Test till his retirement. Whether the applicant could be granted promotion in the scale of Rs.1200-2040/- dehors the rule simply because ad hoc promotion were granted to some of his junior employees for limited period i.e. till they were selected on regular basis even without challenging the regular selection? Be that as it may even the cause of action for ad hoc promotion in terms of Annexure A/6 dated 16.02.1987 had arisen to the applicant in the year 1991 when he was reinstated in service and period of dismissal from service w.e.f. 27.07.1988 to 29.05.1991 was treated as duty period. Further granting of relief of ad hoc promotion to the applicant passed on order dated 16.02.1987 will also adversely affects the right of junior person who has been granted such promotion as stop gap arrangement till the selection is not made after holding the suitability test and in that eventuality such junior person will have to be reverted, besides the fact that the applicant can be held entitled to the scale of Rs.1200-2040/- only if he had qualified the Selection Test, which selection test admittedly the applicant has not qualified till his retirement.

7. Learned counsel for the applicant has also drawn our attention to the decision of the Apex Court in the case of **Gopi Chand Vishnoi vs. State of U.P. and Another** [2006(9) SCC 694]. It was a case where promotion of the applicant was refused in the year 1985 on the ground that he was having certain adverse entries in his service record. However, the adverse entries were expunged in the year 1989. The Apex Court held that the person will be entitled to the promotion w.e.f. 1985 when his juniors were granted promotion. In that case, the issue of limitation was not involved besides the promotion was made as per

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rule. As such the applicant cannot draw any benefit from this judgement.

8. Thus viewing the matter from any angle, the applicant has not made out any case for condoning the delay. Accordingly, the MA for condonation of delay is dismissed.

9. Since the MA for condonation of delay is dismissed, the OA cannot be entertained, which is also dismissed accordingly.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ