

Central Administrative Tribunal  
Jaipur Bench,

Jaipur, this the 22<sup>nd</sup> day of March, 2010

CORAM:

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

OA No. 585/2009

Bheewan Ram Jat,  
s/o Shri Kalu Ram,  
r/o Near Bus Stand Road,  
Ward No.27,  
Devipura, Sikar and  
Presently working as Accountant,  
Office of Superintendent of Post Offices,  
Sikar Postal Division,  
Sikar.

..... Applicant

(By Advocate: Shri C.B.Sharma)

- Versus -

1. Union of India, through Secretary to the Govt. of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur
3. Post Master General, Rajasthan Western Region, Jodhpur.
4. Superintendent of Post Offices, Sikar Postal Division, Sikar.

..... Respondents

(By Advocate: ....)

*[Signature]*

ORDER (ORAL)

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

- (i) That the respondents be directed to extend benefits as allowed to Shri Gopi Chand Sharma by allowing norms based LSG Accountant since 1998 and further norms based HSG-II and thereafter HSG-I as per his seniority by quashing letter dated 15.5.2008 (Ann.A/1) with all consequential benefits.
- (ii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iii) That the costs of this application may be awarded.

2. When the matter was listed on 6.1.2010, this Tribunal passed the following order:-

"Heard learned counsel for the applicant.

We are of the view that the present application is hopelessly time barred; such a stale claim cannot be entertained. Learned counsel for the applicant in Para No.3 of the OA has stated that this application is within limitation as prescribed under Section 21 of the Administrative Tribunal's Act, 1985. We are of the firm view that the applicant is claiming promotion against LSG Accountant since 1998, and further norms based HSG II and thereafter HSG I, as such it cannot be said to be a case of continuing cause of action. The matter is required to be rejected on this count.

Learned counsel for the applicant submits that he intends to move an application for condonation of delay and seeks adjournment."

Thereafter the matter was adjourned from time to time for the purpose of filing application for condonation of delay. The applicant has filed Misc. Application No.102/2010 for condonation of delay. In MA, the applicant has stated that the case of the applicant is similar to that of one Shri Gopi Chand Sharma who was allowed norms based post vide order dated 7.5.2003 (Ann.A/8) notionally w.e.f.

49

1.10.1991 and thereafter vide Ann.A/9 and A/10 he was allowed further promotion to the post of HSG-II and HSG-I whereas the applicant was allowed next higher scale in the year 1998 vide Ann.A/7 inspite of the facts that the applicant was also entitled to notional LSG cadre from the year 1998, but the respondents did not consider the matter in the year 2003 onwards. It is on these grounds the applicant has justified the relief and in the MA it has been stated that the aforesaid grounds are sufficient cause for condonation of delay.

3. We have given due consideration to the submissions made by the applicant in the MA. We are of the firm view that no such relief can be granted to the applicant at this belated stage. As already stated above, the applicant is claiming norms based promotion on LSG post of Accountant and further norms based promotion on the post of HSG-II and HSG-I by quashing order dated 15.5.2008 whereby representation of the applicant dated 29.2.2008 was rejected after a lapse of about 12 years and after a period of about more than six years when such benefits was granted to one Shri Gopi Chand Sharma and other seven persons vide order dated 7.5.2003 w.e.f. 1.10.1991. At the outset, it may be stated that while considering the question of delay and latches on the part of the applicant, the court has also to consider the affect thereof. It may be stated that if at this late juncture the applicant is directed to be promoted to the post of LSG Accountant since 1998, this will affect seniority of those person who had already been promoted in the

meanwhile or have been directly recruited against the aforesaid post. Not only that the applicant is also claiming further promotion on the post of norms based post of HSG-II and HSG-I and to grant seniority at appropriate stage in the cadre which will also affect a person who has been promoted in the meanwhile or is directly recruited on the said post. Thus, granting relief to the applicant at this belated stage will not only affect right of third party but it will also cause drainage to the public funds and such direction cannot be given in public interest.

4. That apart, the applicant is seeking condonation of delay on the basis that he stands on same footing as that of one Shri Gopi Chand Sharma who was also granted benefit vide order dated 7.5.2003 (Ann.A/8) retrospectively on notional basis. The applicant in the application for condonation of delay has not given any explanation as to why he took more than 5 years to make representation to the authorities on the basis of relief granted to Shri Gopi Chand Sharma, vide order dated 7.5.2003 (Ann.A/8). From the impugned order Ann.A/1 it is evident that applicant preferred representation dated 29.2.2008 and the same was rejected on 15.5.2008. According to us, rejection of application dated 15.5.2008 (Ann.A/1) will not afford fresh cause of action.

5. The law on this point is well settled. At this stage, it will be useful to notice few decisions rendered by the Apex Court on the point. The Apex Court in the case of C.Jacob vs. Director Geology and Mining and Anr., 2008 (10) SCC 115, has held as under:-

"The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any decision on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches get obliterated or ignored."

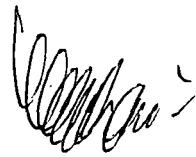
The law laid down by the Apex Court in the case of C.Jacob was also taken into consideration in the case of Union of India and ors. Vs. M.K.Sarkar, JT 2009 (15) SC 70 whereby the Apex Court in Para 9.1 has made the following observations:

"9.1 When a belated representation in regard to a 'stale' or 'dead' issue/dispute is 'considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving 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 decision. 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. If 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 limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect." (emphasis supplied)

9. Thus, in view of what is stated above, we are of the view that no relief can be granted to the applicant at this belated stage. Accordingly, OA as well MA for condonation of delay are dismissed with no order as to costs.

  
(B.L.KHATRI)  
Admv. Member

  
(M.L.CHAUHAN)  
JUDL. Member

R/