

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 29th day of November, 2010

ORIGINAL APPLICATION No.506/2010

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

Bhore Lal
s/o late Shri Fakir Chand,
r/o Flat No.92, Type-III, Malviya Nagar,
Jaipur, presently posted as
Inspector in administrative control of the
Chief Commissioner of Income Tax,
Jaipur

.. Applicant

(By Advocate: Shri Pradeep Asthana)

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Central Board of Direct Taxes represented by its Chairman, Ministry of Finance, North Block, New Delhi.
3. The Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Janpath, Jaipur
4. The Secretary, Department of Personnel & Training, Govt. of India, North Block, New Delhi.
5. Ram Kishan Bairwa s/o Shri G.Ram, Inspector Income tax, posted at Income Tax Office, Shashtri Nagar, Bhilwara, Rajasthan through Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Janpath, Jaipur.

.. Respondents

(By Advocate:)

ORDER (ORAL)

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

- i) By an appropriate order or direction the determination of cadre strength to the financial year 2000-01 for 173 posts out of the restructured 188 post be declared to be illegal and all the vacancies arising due to the restructuring of the cadre strength be directed to have occurred on the date of notification of posts to be filled i.e. 4.06.2001 and not on any date prior to this date.
- ii) By any appropriate order or direction the applicant be also granted all such benefit from the date persons junior to the applicant have been granted the benefit of promotion along with arrears and interest @ 18% on the amount due to the applicant.
- iii) By an appropriate order or direction the applicant be also assigned seniority on promotional post above the persons junior to him in the feeder cadre.
- iv) Cost of the OA may also be awarded in favour of the applicant.
- v) Any other relief.

2. As can be seen from the prayer clause, the grievance of the applicant is regarding promotion to the post of Inspector pursuant to determination of cadre strength in the year 2000-2001. According to the applicant, the respondents have wrongly determined the cadre strength of the post of Inspector and eligibility for promotion to the post should not be as on 1.1.2000 as the cadre restructuring

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was approved by the Union Cabinet on 30.8.2000. It may be stated that the applicant was not eligible for promotion to the higher post on 1.1.2000 as the applicant passed the examination for Inspector subsequently which was held on 30.5.2000. Further grievance of the applicant is that since he appeared in the examination held on 30.5.2000 prior to approval of the cadre strength by the Union Cabinet on 30.8.2000 as such, the applicant was eligible for promotion to the post of Inspector and the date of appearing in the examination should be crucial date for the purpose of determination of eligibility for promotion to the post of Inspector and not 1.1.2000. It may be relevant to mention here that on the basis of criteria laid down by the respondents whereby persons who have passed the departmental examination and eligible on 1.1.2000 were held to be eligible for promotion and a panel of 173 Income Tax Inspectors was prepared on 19.6.2001 and subsequently promotions were granted to these persons. The minutes of the DPC has been placed on record by the applicant as Ann.A/5.

3. From the material placed on record, it is evident that the applicant did not make any grievance regarding selection of 173 persons to the post of Inspector as per the panel for the year 2000-2001 at the relevant time. However, the applicant made a representation dated 17.4.1008 (Ann.A/7) after a lapse of about 7 years to the Chairman, Central Board of Direct Taxes,, New Delhi which representation has been rejected by the respondents vide impugned order dated 6.6.2008 (Ann.A/1), which is in the following terms:-

by

"I am directed to refer to your letter No.396 dated 27.05.2008 on the above subject. Shri Bhore Lal, Inspector had agitated this matter in the year 2002 also and at that point of time, his representation had been rejected. The official as well as his advocate had been informed of the same vide this office letter nos. 163 dated 19.06.2002, 206 dated 11.07.2002 and 263 dated 08.08.2002.

The OA no.498/2002 filed by Shri Radhey Shyam Verma on the same issue had been dismissed by the Hon'ble CAT. Since the facts of the case are the same, the representation of the official deserves to be rejected. You are requested to kindly intimate the official accordingly."

4. From the material placed on record, it is also evident that the applicant did not challenge the said letter Ann.A/1. However, a Misc. Application No.18861/2009 was moved before the Hon'ble High Court in pending DB Civil Writ Petition no. 13013/2008 filed by one Shri Radhey Shyam Verma against the order of this Tribunal whereby claim of Shri Radhey Shyam Verma regarding the said selection was rejected. The said Misc. Application has been rejected by the Hon'ble high Court vide order dated 5.3.2000 on the ground that the applicant cannot be impleaded as co-petitioner in the case filed by Shri Radhey Shyam Verma as the applicant is not a necessary party in the Writ Petition and for fresh cause of action made available to him by rejecting representation vide order dated 6.6.2008, he can file a separate petition for redressal of his grievance before the appropriate forum. Now, the applicant has files this OA thereby challenging the order dated 6.6.2008 (Ann.A/1). Alongwith the OA, the applicant has also filed MA No.322/2010. In the MA, it has been stated that the applicant is aggrieved by non-consideration of his candidature to the post of

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Income Tax Inspector and passing the impugned order dated 6.6.2008 which give the ultimate cause of action to assail the issue of non consideration of his promotion to the post of Income Tax Inspector and that too, due to supersession by this juniors. It is stated that under the advice of his counsel, the applicant preferred an application before the Hon'ble High Court which application has been dismissed and as such, the applicant has approached before this Tribunal in view of the provisions contained in Administrative Tribunals Act. It is further stated that in view of the application before the Hon'ble High Court and the time consumed for disposal of such application, the delay occurred under Section 20 and 21 of the CAT Act, is bonafide and the same may be condoned.

5. We have heard the learned counsel for the applicant at admission stage. We are of the view that the present OA as well as Misc. Application for condonation of delay is required to be rejected straightway as the applicant has not afforded any plausible reason to condone the delay. As can be seen from the facts as stated above, the applicant is aggrieved by non-consideration of his candidature in the selection to the post of Inspector conducted in the year 2000-2001 as the applicant was not eligible for consideration to the higher post of Inspector on 1.1.2000 whereas he has admittedly passed the departmental examination subsequently. On the basis of such selection, 173 persons were promoted as Inspector in the year 2001. The representation against such selection was made by the applicant in the year 2008 after a lapse of about 7 years which was rejected

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vide order dated 6.6.2008 on the ground that similar representation by Shri Bhore Lal has already been rejected in the year 2002. It is further stated that Shri Radhey Shyam Verma has also filed OA No.498/2002 which has also been dismissed by the Tribunal. Thus, according to the respondents, since the facts of case of the applicant are similar to that of Shri Radhey Shyam, the representation of the applicant deserves to be dismissed.

6. We see no infirmity in the order passed by the authorities whereby representation of the applicant was rejected. According to us, filing of representation after a lapse of 7 years and its dismissal vide order dated 6.6.2008 cannot be construed that cause of action in favour of the applicant has arisen in the year 2008. In fact, the cause of action has arisen in favour of the applicant in the year 2001 when his candidature for promotion to the post of Inspector was not considered. The Apex Court repeatedly held that belated representation in regard to stale or dead issue should not be considered and decided and further the Court should not give any direction to consider such stale or dead claim and decision so taken by the authorities cannot be considered as furnishing a fresh cause of action for reviving the dead issue or time barred dispute. The applicant has not given any explanation in his Misc. Application for condonation of delay as to why he has not approached the Tribunal and filed OA in the year 2002 as was done by Shri Radhey Shyam Verma, in terms of provisions contained under Section 21 of the Administrative Tribunals Act. In fact the applicant has not given any explanation for not approaching the Tribunal in terms of

provisions contained in Section 21 of the Administrative Tribunals Act. What the applicant has pleaded is that rejection of his representation vide order dated 6.6.2008 will afford fresh cause of action.

7. Law on this point is no longer res-integra. At this stage, we wish to refer to the decision of the Apex Court in the case of Union of India vs. M.K.Sarkar, (2010) 1 SCC (L&S) 1126 whereby earlier decision of the Apex Court in the case of C.Jacob Vs. Director of Geology and Mining, (2008) 2 SCC (L&S) 961 was relied. That was a case where representation dated 8.10.98 for seeking option to shift to pension scheme w.e.f. 1976 was filed after a lapse of 22 years. The tribunal entertained the claim of the respondent before the Apex Court on the ground that he was not aware about the option given by the railway administration, as such, in the absence of written intimation of option, it is permissible for the respondent to exercise option and direction was given to the appellants to take a decision on the representation of the respondent. The Railway Board rejected the representation for switching over to the pension scheme as being untenable. Thereafter second application was filed before the Tribunal. The Tribunal allowed the application and directed the appellants to permit the respondent to opt for pension scheme. The Writ Petition filed before the High Court was dismissed. It was under these facts and circumstances, the Hon'ble Apex Court held that respondent's representation dated 8.10.98 seeking option to shift to pension scheme w.e.f. 1976 ought to have been straightway rejected as barred by limitation/delay and latches. At

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this stage, it will be useful to quote para 14, 15 and 16 of the judgment, which thus reads:- T

"14. The order of the Tribunal allowing the first application of respondents without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in *C. Jacob v. Director of Geology and Mining*, 2008 (2) SCC (L&S) 961.

"9. 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 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 such applications/petitions ignoring the 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."

15. 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 cannot 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 direction. 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.

16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or

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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" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

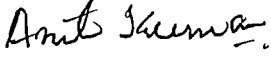
8. As can be seen from para-15 of the judgment, as reproduced above, it has been specifically held by the Apex Court that issue of limitation/delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with the court direction. The Apex Court has further held that 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. Thus, in view of what has been stated above, we are of the view that the present OA is required to be rejected being time barred as the applicant has not given any explanation why he has not challenged in the year 2002 the promotions made in 2000-2001 in terms of the provisions contained in Section 21 of the Administrative Tribunals Act, 1985 as was done in the case of Radhey Shyam Verma. Thus, the applicant cannot be placed at par with Radhey Shyam Verma and the Hon'ble High Court has rightly rejected the Misc. Application of the applicant for impleading him as co-petitioner in a pending writ petition filed by Radhey Shyam Verma.



9. That apart, the applicant cannot be granted relief yet on another ground. According to the applicant, the eligibility date for filling up 173 vacancies should be on or after 4.6.2001 and not 1.1.2000. In case the relief is granted to the applicant based on this fact, 173 inspectors who stood already promoted in the year 2001 as per the eligibility criteria of 1.1.2000 will have to be reverted and their appointment to the post of inspector will have to be quashed. The applicant has not impleaded these affected persons as party in this OA. Even on this ground also, the applicant is not entitled to any relief. Facts remain that the applicant is responsible for his own misfortune. He did not consider it necessary either to join the affected parties as respondents in this OA nor he agitated the matter immediately thereafter when 173 inspectors were considered for promotion in the year 2001 and candidature of the applicant was not considered. It is true that an employee cannot be denied his promotion in terms of rules, but at the same time the employee cannot be granted out of way relief as a result whereof right of third party is affected. This aspect of public interest as well as general administration has to be kept in mind while granting equitable relief. In case the applicant is granted relief at this stage, as already noticed above, promotion of 173 inspectors will not only have to be quashed but it will also affect seniority of those employees who have been promoted in the meantime or the employees directly recruited.

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10. For the foregoing reasons, the Misc. Application No. 322/2010 for condonation of delay is rejected. In view of rejection of Misc. Application, the OA filed by the applicant stands rejected.


(ANIL KUMAR)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

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