

X

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

**ORDER SHEET**

---

**ORDERS OF THE TRIBUNAL**

---

24.09.2012

OA No. 128/2012 with MA 49/2012

None present for applicant.

Mr. V.K. Pareek, Counsel for respondents.

None present for the applicant even in the second round.

Heard learned counsel for the respondents.

The OA as well as MA are dismissed by a separate order.

*Anil Kumar*

(Anil Kumar)  
Member (A)

*K. S. Rathore*

(Justice K.S.Rathore)  
Member (J)

*ahq*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

Jaipur, the 24<sup>th</sup> day of September, 2012

**ORIGINAL APPLICATION No. 128/2012**  
**WITH**  
**MISC. APPLICATION NO. 49/2012**

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER  
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Lal Chand Meena son of Shri Bhura Ram Meena, aged 52 years, resident of House No. 4335, Govind Raj ji Ka Rasta, Purani Basti, Jaipur. Presently working as Drilling Assistant (DA) in the office of Dy. Director General, GSI, Drilling Division, Jhalana Dungri, Jaipur.

... Applicant  
(By Advocate : None )

Versus

1. Union of India through the Secretary to the Government, Department of Mines, Shastri Bhawan, New Delhi.
2. The Director General, GSI, 27, JLN Marg, Calcutta.
3. The Dy. Director General, GSI, 15-16, Jhalana Dungri, Jaipur.

... Respondents  
(By Advocate : Mr. V.K. Pareek)

**ORDER (ORAL)**

Nobody appeared on behalf of the applicant even in the second round. We have perused the MA No. 49/2012 seeking condonation of delay in filing the present OA. Undisputedly, the present OA has been filed after delay of 11 years. In the MA for seeking condonation of delay, it is stated by the applicant that the applicant is seeking his promotion against the vacancy of 2001 on the post of Drilling Assistant, which is lying vacant.



2. When the promotion on the next higher post was going to be made in February, 2011 then only the applicant came to know about the fact that he has not been promoted against the vacancy of 2001. Since the applicant has not been promoted against the vacancy of 2001, in such eventuality, the applicant has no option except to file the representation dated 03.03.2011 to the Deputy Director General, GSI, Jaipur, which has not been responded/considered by the respondents.

3. We have also considered the averments made by the applicant in the OA and have carefully perused the documents annexed therewith. Earlier also, the applicant filed an OA No. 345/2011, which was disposed of vide order dated 04.08.2011, directing the respondents to consider the representation dated 03.03.2011 by passing a reasoned & speaking order in accordance with the provisions of law. Now this present OA has been filed by the applicant on 24.02.2012, praying for the following reliefs:-

- "(i) that the so called speaking order (Annexure-1) passed by the respondents be declared null and void as it is not passed as per law.
- (ii) that the respondent be directed that the applicant be promoted on the post of Drilling Assistant against the Vacancy of 2001, as the applicant was the only eligible candidate and the post of still lying vacant. That post has yet not been filled.
- (iii) that the respondent be directed to give all the consequential benefits to the applicant, on being promoting him on the post of Drilling Assistant against the vacancy of 2001.
- (iv) that the cost of the litigation be also awarded to the applicant.
- (v) any other order, writ or directions in favour of the applicant be also ordered to be passed."



4. Per contra, the respondents in their reply to the MA seeking condonation of delay have categorically stated that the Departmental Promotion Committee was convened on 27.08.2001 for the post of Drilling Assistant for 11 vacant posts. In Para No. 2 of the reply to the MA, the respondents have categorically stated that no vacancy of Drilling Assistant of the 2001 is still lying vacant. It is also contended on behalf of the respondents that delay of 11 years has not been explained in the MA.

5. We have heard the learned counsel for the respondents and have carefully gone through the MA seeking condonation of delay. The applicant utterly failed to explain the day to day delay in filing the OA. The applicant was well aware of this fact that this is the second round of litigation as in compliance of his earlier OA No. 345/2011; the representation of the applicant has been decided.

6. 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.

(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) of 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)."

7. Consequently, in view of the judgment of the Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India & Others**, we are of the view that the Misc. Application for seeking condonation of delay deserves to be dismissed and the OA also deserves to be dismissed on account of delay & latches..

8. Accordingly, the OA as well as MA are dismissed with no order as to costs.

*Anil Kumar*

(Anil Kumar)  
Member (A)

*K. S. Rathore*

(Justice K.S.Rathore)  
Member (J)

*AHQ*