

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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OA No. 060/01141/2014

Date of decision- 23.12.2014.

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

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Balwinder Singh S/o Sh.Sucha Singh R/o House No. 439, Sector 29-A,
Chandigarh.

...APPLICANT

BY ADVOCATE : Sh. K.K. Saini.

VERSUS

1. Union of India through its Secretary.
2. Director General of Board, Ayudh Bhawan, 10-A, S.K. Bose Road, Kolkatta 700001.
3. The General Manager, Ordinance Cable Factor, Plot No. 183, Phase-I, Chandigarh.
4. Karam Singh working as Leading Fireman, Ordinance Cable Factor, Plot No. 183, Phase-I, Chandigarh.

...RESPONDENTS

ORDER

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HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

By means of the present Original Application, the applicant has sought issuance of direction to the respondents to promote him from the date when respondent no. 3 was promoted i.e. 02.07.2007, as per

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the roster point no. 7 which is kept reserved for scheduled caste candidate as per O.M dated 02.07.1997.

2. The brief facts are sufficient for adjudication of the matter. The applicant was initially appointed as Fireman Grade II (FM) on 25.07.1994 and was further promoted as Grade I on 13.03.2002. During the introduction of 6th Pay Commission, the posts of Grade I and Grade II of Fireman were converted into the post of Fireman and the post of leading Hand Fireman was converted in leading Fireman. It is case of the applicant that roster point 7 was reserved for Scheduled caste candidate and respondent no. 3 had been promoted against the said point in the year 2007, but his case was not considered. In the year 2014, he served a legal notice upon respondents which was rejected. Hence, the present O.A.

3. Sh. K.K. Saini, learned counsel for the applicant submitted that claim of the applicant is based upon an O.M. dated 02.07.1997 and relying upon which he had served a legal notice on 25.08.2014 to the authorities which was replied to by the respondents stating that "*vide OM order dated 02.07.1997 onwards a new roster i.e. 13 points roster was implemented. As per points roster, SC category is to be earmarked against point no. 7. Since, there is only one point has been earmarked for SC category for cadre strength 1 to 13 points and one SC has already been placed under serial no. 1, therefore, SC can not*

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be placed against serial no. 7. He prayed that this action of the respondents is bad in the eyes of law and case of the applicant may be considered for his promotion from the date when respondent no. 3 was promoted.

4. We have heard Sh. K.K. Saini, learned counsel for the applicant and perused the pleadings as available on record.

5. Perusal of the reliefs under the 'Relief sought for' makes it clear that the applicant has not impugned the order dated 21.10.2014 vide which his legal notice was rejected. He is simply asking for a direction to the respondents to consider his case for promotion as per the roster point no. 7 in terms of the O.M. dated 02.07.1997, which was done in year 2007 by filing the present petition in the year 2014, which is hit by Section 21 of Administrative Tribunals Act 1985 wherein it is mentioned an O.A is to be filed within one year from the date of cause of action and this O.A has not been filed within that prescribed period of limitation. The applicant has even not filed an application for condonation of delay in filing the present application.

6. Law prescribes certain bars for approaching a judicial forum. The most important of them is the bar of Limitation. Section 21 of the Administrative Tribunals Act, 1985, (for brevity 'the Act') provides this bar. It is inconceivable that a litigant may come at any time before a Court and claim adjudication of his/her grievance, thereby unsettling

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the matter which has already been presumed to have come to a rest. In the case of **Union of India versus Harnam Singh** (1993(2) S.C.C. Page 162), the Hon'ble Apex Court has held that "the Law of Limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to aid of those who sleep over their rights and allow the period of Limitation to expire." As per Section 21 of the Act an Application under Section 19 of the Act can be filed within one year from the date of cause of action, which can be extended by another six months if any statutory appeal or revision is pending. Beyond that an application for condonation of delay as provided under Section 21(3) of the Act is to be filed with sufficient cause. The delay and laches must be explained to the satisfaction of the Court for seeking condonation as held in the case of **Bhup Singh versus Union of India & Ors.** (1992 A.I.R. S.C. Page 1414). Section 21 of the Act, came up for consideration before the Hon'ble Apex Court in the case of **Union of India & Ors. Versus M.K.Sarkar** (2010(2) S.C.C. Page 58), wherein it has again been reiterated that limitation has to be counted from the date of original cause of action and decision on a belated representation would not revive the cause of action. It has been held as follows:-

"The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. When

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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 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. Moreover, 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 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."

07. In the present case, the applicant is seeking promotion from the date when respondent no. 3 was promoted i.e. 02.07.2007. The cause of action, if any, arose in favour of the applicant in the year 2007 when the promotion of respondent no. 3 took place. He did not approach the court of law immediately but is asking for the relief by filing O.A. in the year 2014 i.e. almost after a period of seven years. There is no reason given in the O.A, for not approaching the court well within time. No application for condonation of delay too has been filed.

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At the cost of repetition, it is noticed that there is a reason for fixing the limitation for filing the O.A as a stale claim cannot be allowed to be agitated in the Court of law, which otherwise has been accepted by the employee by not challenging it at the relevant point of time. Again in a judgment passed in the case of **Union of India & Ors. Versus A.Duairaj** (J.T. 2011(3) S.C. Page 254, *the Hon'ble Apex Court* has observed as under:-

Re: Question (i)

12. Section 21 of the Administrative Tribunals Act, 1985 prescribes the limitation for approaching the Tribunal. In this case the medical examination of the Respondent and the non-promotion as ad hoc ASTE were in the year 1976. The Respondent accepted the diagnosis that he was colour blind and did not make any grievance in regard to his non-promotion. On the other hand, he attempted to get treatment or correction contact lenses from USA (to aid the colour blind to distinguish colours correctly). On account of the non challenge, the issue relating to his non-selection in 1976 attained finality and the same issue could not have been reopened in the year 1999-2000, on the ground that medical tests conducted in 1998 and 2000 showed him to be not colour blind.

13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage of effectively contest or counter the claim, as

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the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same, and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This Court had occasion to examine such situations in Union of India v. M.K. Sarkar (JT 2009 (15) SC 70: 2010(2) SCC 58) and held as follows:-

"The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. Xxxxx

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 reviewing 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.

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

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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 to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect."

Considering the above authoritative law on the subject in the context of the peculiar facts of this case, we are left with no other option but to dismiss the Original Application on the ground of delay and laches.

08. Ordered accordingly. No costs.

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 23.12.2014.

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