RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

This is the 09th day of October *2018*.

ORIGINAL APPLICATION No. 330/01323 of 2017

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).

Raja Ram Gupta, retired Postman, aged about 62 years, S/o Late Gopi Nath R/o Kokhraj Bharwari Near Sindhia Post Chowki, District Kaushambi.

.....Applicant.

By Advocate: Shri Bhagirathi Tiwari

VERSUS

1. Union of India through Secretary Ministry of Communication Department of Postal, Dak Bhawan Sanshad Marg, New Delhi.
2. P.M.G./D.P.S., Allahabad Division, Allahabad.
3. Director Accounts (Posts) U.P. Circle, Sector – B, Aliganj Lucknow.
4. S.S.P.Os Allahabad Division, Allahabad.
5. Sr. Post Master, Head Post Office, Allahabad.

By Advocate : Shri Anil Kumar Ojha

.....Respondents

ORDER

1. Applicant Raja Ram Gupta avers that he was appointed as GDS in the postal department on 20.08.1975 and promoted to Postman in Group – D towards the vacancies of 1999-2000 vide order dated 28.10.2004 and retired on 31.12.2015 and his retirement claim under CCS Pension Rule 1972 has been denied by the respondents, therefore he seeks relief of being covered by the Pension of 1972. Whereas, respondents' case is that applicant was promoted as Postman on 01.1.2004 and therefore he would be covered by the New Pension Scheme effective from 01.01.2004 and in which scheme 10 % of Pay plus DA would be the monthly contribution for pensionary benefit.

2. So, the limited question arises whether applicant is to be covered by the Old or the New pension Scheme. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record as well as the written arguments filed by both sides. The learned Counsels for the parties during the arguments have reiterated the pleas raised by them in the pleadings as well as written arguments.

3. Learned Counsel for applicant placed reliance upon O.A. No. 20/2016 titled Sheeba B v/s Union of India decided by the Central Administrative Tribunal, Bench Ernakulam on 15.02.2016 and O.A. No. 286 of 2012 titled Manendra Giri v/s Union of India decided by decided by the Central Administrative Tribunal, Bench Allahabad vide order dated 12.02.2018 in support of his arguments.

4. While going through the facts of the case, the question of limitation has arisen i.e. whether the present O.A. is barred by period of limitation as given in the Central Administrative Tribunal Act. Respondents have, no doubt, not raised the plea of limitation but the settled law is that even in absence of plea of limitation being raised, it is incumbent whom the tribunal to go into the question of limitation and see whether the O.A has been filed beyond the period of limitation or not.

5. Section 21 of the Administrative Tribunals Act, 1985, deals with the limitation. Section 21 reads as follows:-

"(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is 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 subsection (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 subsection (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) or, 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".

6. In Esha Bhattachargee Vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649, the Hon'ble Apex Court observed that : "The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-

challant manner requires to be curbed, of course, within legal parameters."

7. In Chennai Metropolitan Water Supply and Sewarage Board and Others Vs. T.T. Murali Babu (2014) 4 SCC 108, it was held by the Hon'ble Apex Court as under:-

> "13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others[AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp[(1874) 5 PC 221], which is as follows:-
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> "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

8. In State of Maharashtra v. Digambar[(1995) 4 SCC 683], while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Hon'ble Apex Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

9. In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc.(AIR 1987 SC 251) the Court observed that:

> "it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic."

10. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize

whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

11. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. To repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. Such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

12. It is settled law that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (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.

13. In the instant case, applicant was promoted vide order dated 28.10.2004 and retired on 31.12.2015 and therefore the respondents would have definitely cut the monthly contribution at the rate of 10 % of Pay plus DA for pensionary benefit. Therefore the cause of action occurred to the applicant in the year 2004 or at the most in 2015 at the time of his retirement. Applicant has not given any reason, let alone a plausible reason to explain the delay in filing the present O.A. from 2004 or the most year 2015.

14. At the most it could be said that the dispute regarding pension can be a recurring/continuing cause of action and but this would not hold water in the present case since the case of applicant is not that he is not being given the post retiral benefit but the form in which it is being given. The applicant knew in 2004 that he has been brought under the New Pension Scheme but chose to keep quiet and come forth in the year 2017 and that too after two years of his retirement to file the present O.A. to seek relief that he is covered by the Old Pension Scheme.

15. Had the applicant approached a competent Court of Law in 2004 at the relevant time, and had the Court of Law granted the relief to give retrospective effect to his appointment from the date others were appointed, he could have claimed the benefit of old Pension Scheme which was in force till 31.12.2003. Having not done so, it is not open to him at this highly belted stage to claim any relief to the extent that he should be covered.

16. In a recent decision in SLP (C) No.7956/2011 (CC No.3709/2011) in the matter of D.C.S. Negi vs. Union of India & Others, decided on 07.03.2011, it has been held as follows:- "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 clauses (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)".

17. Last but not the least, reference may be made to State Of Uttaranchal & Anr vs Shiv Charan Singh Bhandari & Ors on decided on 23 August, 2013 wherein the Hon'ble Apex Court on the question of laches and delay in coming to the court to decide matters of seniority, held that "We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being

had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

18. In the light of the aforesaid observation of the Hon'ble Supreme Court, the law down in a catena of judgments is that an aggrieved party has to approach the court within the statutory period prescribed and after the expiry of that period, the Court cannot grant the relief prayed for. In the case of Ex-Captain Harish Uppal vs. UOI, JT 1994 (3) 126, the Hon'ble Supreme Court of India has categorically laid down the law that "delay defeats equity and the Court should help those who are vigilant and not those who are indolent. The parties are expected to pursue their rights and remedies promptly and if they just slumber over their rights, the court should decline to interfere.

19. The approach of the applicant from the beginning has been lackadaisical and indolent which is responsible for the inordinate delay in approaching this Tribunal. Delay and laches, on part of the applicant to seek remedy is written large on the face of record.

20. Applicants relied upon Sheeba B (supra) Manendra Giri (Supra) in support of their case, however, while it supports the case of applicant, the question of Limitation was not present in the said O.As and therefore are of no avail to the applicants since the present O.A. is to be dismissed on the question of limitation.

21. In the light of the aforesaid settled principle of law and the facts of the case as noted above, I am of the view that the applicant has failed to make out a sufficient cause for not making the original application within the period of limitation as envisaged by Section 21 of the Act. Accordingly the OA, being barred by period of limitation, is dismissed. There shall be no order as to costs.

(**Rakesh Sagar Jain**)

Member (J)

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