

**Central Administrative Tribunal
Principal Bench**

**OA No.121/2013
MA No.87/2013**

New Delhi, this the 15th day of December, 2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Shri Ashok Kumar Gaur,
Lecturer Agricultural Science,
Govt. Co-Ed. Senior Secondary School,
Chilla Village, Mayur Vihar,
Phase-I, Delhi-110091.

...applicant

(By Advocate : Shri Anil Singal)

Versus

1. Govt. of NCT of Delhi,
Through Chief Secretary,
Delhi Sachivalaya, I.P. Estate,
New Delhi.
2. Director Education,
Govt. of NCT of Delhi,
Old Secretariat, Delhi.
3. The Superintendent (Establishment-II),
Directorate of Education,
Govt. of NCT of Delhi.
4. Sh. Ranvir Singh,
Lecturer Agriculture.
5. Shri Rohtash Kumar,
Lecturer Agriculture,

...respondents

(By Advocate : Ms. Rashmi Chopra)

ORDER (ORAL)**Mr. A.K. Bhardwaj, Member (J) :-**

The applicant participated in TGT (NS) Examination 1994 and got 68 marks. In the seniority list of TGT, he was assigned seniority at Sl. No.2413A (old) 5978 (new). Shri Ranvir Singh qua whom he has espoused his claim for seniority and promotion was assigned seniority at 2365 (old) 5814 (new). The selection for TGT (NS) had been finalised in the year 1994, and the *inter se* seniority was fixed thereafter but the applicant never questioned the same. For the first time, he approached this Tribunal by filing OA No.2663/2004 espousing therein his grievance regarding promotion to the post of PGT (NS). The OA was disposed of with the following orders :-

“The applicant was appointed as Trained Graduate Teacher (Natural Science) in the year 1994. The respondents initiated action for promoting TGTs to the post of Post Graduate Teacher. The grievance of the applicant is that his just claim has been ignored and his juniors have been promoted. Perusal of the petitioner reveals that there is some controversy raised ever pertaining to the seniority of the applicant. With respect to the said reliefs, the applicant has submitted a representation dated 8.10.2004 addressed to the Director (Education), Government of National Capital Territory of Delhi.

2. When rights of the respondents are not likely to be affected, we deem it unnecessary to issue a notice while disposing of the present petition.

3. It is directed that respondent no.2 would consider the said representation and pass an appropriate speaking order within three months of the receipt of the certified copy of the present

order and communicate it to the applicant. We make it clear that nothing said herein is any expression of opinion on the merits of the matter. O.A. is disposed of.”

2. Thereafter, the applicant was given promotion as PGT w.e.f.

29.03.2005. The order of promotion reads thus :-

“On the recommendations of Departmental Promotion Committee and with the approval of the Competent Authority, Sh. Ashok Kumar Gaur, TGT (N.Sc.), DOB 01/06/66 and Seniority No.2413-A is promoted on regular basis to the post of PGT (Agriculture) in the pay scale of Rs.6500-10500/- plus usual allowances as admissible under the Rules with immediate effect. Monetary benefits of the promotion will accrue from the date of joining the post of PGT (Agriculture). Consequent upon his promotion to the post of PGT he is posted as follows :-

Sr. N.	Employee ID	Employee Name (Date of Birth)	Designation	Current School/Branch (District)	Transferred To	On Diverted Capacity	Remarks
1	19945181	ASHOK KUMAR GAUR (Jun 1 1966)	TGT Natural Science	Jheel Khurenja, No.1-SBV (1003003) (East)	Fatehpur Beri-GBSSS (1923014) (South)	No	

The promotion is subject to the condition that the candidate fulfils all the requirements as laid down in the Recruitment Rules of PGT post and is further subject to the condition that there is no vigilance case/departmental enquiry pending against the teacher concerned. District DDE is hereby directed to check the PG qualifications and vigilance of the aforesaid TGT within seven days and ensure that period of posting as TGT counts towards duty. Further, the teacher concerned shall not be relieved by concerned Head of School from his present posting until and unless District DDE concerned after examining issues a certificate regarding the Eligibility of the promoted teacher as per the RRs and Clearance from Vigilance angle online through MIS. A module has been prepared for this and is available through the password of Distt. DDEs in the link of transfer

procedure. If the teacher still refuses to accept the promotion, then even disciplinary action can be taken against him for refusing to obey the order. Teacher refusing promotion and debarred consequently will lose his original seniority, when he is promoted later.”

3. The applicant never questioned the said order of his promotion and filed the present OA only on 20.12.2012. The prayer made in the OA reads thus :-

- “a. To direct the respondent No.1 to 3 to fix the seniority of the applicant/Ravi Singh correcting and revising the seniority list issued by respondent NO.1to3 above the respondent No.4 & 5 i.e. from 17/07/2001.
- b. to direct the respondent No.1 to 3 to fix the applicant’s salary from 17/07/2001.
- c. to direct the respondent NO. 1 to 3 to pay the applicant’s pay arrears and other benefits.
- d. to call the records of the applicant as well as respondent No.4 & 5.
- e. any other relief/reliefs that your lordships may deem fit proper in the facts and circumstances of the case.”

4. Apparently in the OA filed in the year 2012, the applicant has challenged the effective date of his promotion as PGT. In **B.S. Bajwa & Anr vs State Of Punjab & Ors.**, JT 1998 (1) SC 57, the Hon’ble Supreme Court has ruled that the issue of seniority in

promotion cannot be re-opened after long delay. The relevant excerpt of which reads thus :-

“Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance made made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the order aforesaid persons and the rights inter se had crystalised which ought not to have been re-opened after the lapse of such a long period. At every stage the others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be re- opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under [Article 226](#) and to reject the writ petition.”

5. One of the plea espoused by the learned counsel for applicant is that he had made a representation on 07.11.2012 claiming his promotion from the date of promotion of his junior i.e. 2001. We find that the representation was made only on 07.11.2012. In the case of ***Union of India & others v. A. Durairaj (dead) by LRs***, JT 2011 (3) SC 254, the Hon'ble Supreme Court ruled that the repeated representations or reply thereto cannot extend the

period of limitation and the period of limitation needs to be counted from the date of cause of action which in the present case is date of preparation of select list. The relevant excerpt of the judgment reads thus :-

“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 to effectively contest or counter the claim, as 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* 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. 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 for 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 courts direction. Neither a courts 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. 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 to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect.”

(emphasis supplied)

6. The Honble Supreme Court in **S.S. Rathore v. State of Madhya Pradesh**, (1989) 4 SCC 582, ruled that repeated unsuccessful representations cannot bring the cause under limitation. The relevant excerpt of the judgment reads thus:-

“We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.”

7. Though the applicant has moved MA No.87/2012 for condonation of delay but in the application no sufficient or convincing grounds for condonation of delay have been put forth. In para 4 of the MA itself, the applicant has espoused that his grievance in the OA is with regard to fixation of his seniority as TGT (Natural Science), which was fixed on his appointment in the year 1994. It is *stair decisis* that in the MA for condonation of delay day to day delay needs to be explained. Accordingly, the MA is liable to be rejected.

8. In view of the aforementioned, both the MA and OA are rejected. No costs.

(Shekhar Agarwal)
Member (A)

(A.K. Bhardwaj)
Member (J)

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