

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.561/2014
MA No.3353/2016**

This the 14th day of May, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Kuldeep Kaul S/o Dina Nath Kaul,
R/o 332-D, Pocket-2, Mayur Vihar,
Phase-I, Delhi-110091.

... Applicant

(By Advocate: Mr. Yogesh Sharma)

Versus

1. Council of Scientific & Industrial Research
through its Director General,
Anusandhan Bhawan, 2 Rafi Marg,
New Delhi-110001.

2. Director,
National Institute of Science Communication &
Information Resources,
Dr. K. S. Krishnan Marg (Pusa Campus),
New Delhi-110012.

... Respondents

(By Advocates: Mr. Praveen Swarup)

O R D E R

Justice Permod Kohli, Chairman :

MA No.3353/2016 for condonation of delay & OA No.561/2014

The applicant was appointed on the post of Technical Assistant in the National Institute of Science Communication & Information Resources (NISCAIR) on 09.01.1984. He earned promotion to the post of Senior Technical Assistant in 1989 and to the post of Technical Officer 'A' on 01.09.1994. The next promotion from the post of

Technical Officer 'A' is to the post of Technical Officer 'B' with five years' qualifying service as Technical Officer 'A'. The applicant became eligible for promotion as Technical Officer 'B' w.e.f. 01.01.1999. The promotion was to be made on the basis of recommendation of the assessment committee subject to 50% marks of ACR/APAR and 50% marks in interview conducted by the assessment committee. Out of 100 marks, 70% marks are the qualifying (threshold marks) for declaring one fit for next promotion.

2. In 1998 the applicant was placed under suspension on lodging of a criminal case against him. In the year 2001, the applicant was discharged from the criminal case. The assessment committee considered suitable candidates for promotion to the post of Technical Officer 'B' on 22.08.2001. The applicant was also called for interview, but his consideration was kept in sealed cover on account of pendency of disciplinary proceedings. His suspension was revoked on 09.02.2007 and the period of suspension was treated as on duty. The applicant was informed vide order dated 20.03.2007 that the sealed cover proceedings of the assessment committee were opened and it is regretted that the committee did not recommend him in view of the less threshold acquired by him in interview and APAR. It is stated that the applicant secured copy of the assessment proceedings under RTI, whereupon he found that he was awarded 46.08 marks in APAR out of 50, but was awarded only 10.4 marks out

of 50 in the interview. In fact, the applicant is aggrieved of the marks awarded to him in the interview. He made a representation dated 06.06.2007 against the order dated 20.03.2007, followed by another representation dated 10.12.2007 in respect of the assessment made by the assessment committee. The said representation was rejected vide letter dated 18/19.12.2008. The applicant has, however, not disclosed about this rejection order in the OA, but the same is evident from the reply filed by the respondents. Director General, CSIR also communicated rejection of the representation of the applicant on 18/19/12/2008 vide his office memorandum dated 23.02.2009. The applicant made yet another representation dated 08.05.2009. This representation also came to be rejected vide order dated 18.07.2012. It is alleged that when the representation of the applicant was rejected, one Mr. B. K. Gupta was the Director, NISCAIR, who was biased against the applicant, and after Mr. Gupta, a new Director joined, whereupon the applicant made another representation on 10.01.2013 followed by yet another representation dated 06.03.2013 for reconsideration of his request. The new Director favourably recommended the case of the applicant to CSIR vide letter dated 25.03.2013. CSIR, however, passed the impugned order dated 03.06.2013 again rejecting the case of the applicant. The impugned order reads as under:

“With reference to his representation dated 06.03.2013 regarding assessment promotion Sh. Kuldeep Kaul, Technical Officer is hereby informed that NISCAIR had again requested CSIR Hqr vide DO letter dated 25/03/2013 for reconsidering his case.

CSIR vide their letter dated 15.05.2013 has informed that the matter has already been considered by DG, CSIR quite in detail earlier and replied vide their letter dated 18-19/12/2008 that CSIR Headquarter has informed that in case there is any new fact, the same can be referred to DG, CSIR for consideration.

Accordingly, the decision communicated by NISCAIR OM dated 23/02/2009 is reiterated.”

3. The respondents filed their counter-affidavit on 17.09.2014 raising the plea of limitation. It was on such plea being raised that the applicant filed a condonation application bearing MA No.3353/2016 on 03.11.2016 reiterating the averments made hereinabove. The respondents have filed counter to the condonation application affirming their earlier stand of limitation.

4. Mr. Yogesh Sharma, learned counsel appearing for the applicant, vehemently argued that the limitation should not come in the way of the applicant as his case was favourably recommended subsequently by the new Director. He has relied upon the judgments of the Hon'ble Supreme Court in *Oriental Aroma Chemical Industries Limited v Gujarat Industrial Dev. Corp. & another* [2010 (2) SCC (L&S) 50]; *Improvement Trust Ludhiana v Ujjwar Singh* [(2010) 6 SCALE 173]; *Madras Port Trust v Hymanshu International*

[(1979) 4 SCC 176]; and *State of Bihar v Kameshwar Prasad* [2000 (2) ATJ 614], to impress upon the court that the question of limitation should be applied in a liberal and realistic manner so as to consider the claim of the applicant on merits. It is contended that the Hon'ble Supreme Court has held that merit should not be thrown out on technicalities, rather substantive justice should prevail.

5. Mr. Praveen Swarup, learned counsel appearing for the respondents has, however, referred to the judgment of the Apex Court in *C. Jacob v Director of Geology and Mining & another* [(2008) 10 SCC 115] wherein the Hon'ble Supreme Court deprecated the practice of the courts issuing directions to departments to consider stale claims, as by such directions the cause of action stood revived due to fresh consideration. He has also relied upon the judgment of the Apex Court in *State of Uttaranchal & another v Shiv Charan Singh Bhandari & others* [(2013) 12 SCC 179]. Referring to *C. Jacob's* case (supra) and the judgment in *Union of India & another v M. K. Sarkar* [(2010) 2 SCC 59], the Hon'ble Supreme Court held as under:

“16. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant

time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the Tribunal only in 2003. It is clear as noonday that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15-11-1983.

19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time."

6. We have heard the learned counsel for parties at length. The admitted factual position is that the applicant's claim for promotion was considered by the assessment committee on 22.08.2001. His assessment was kept in sealed cover on account of pending disciplinary proceedings. On termination of disciplinary proceedings and reinstatement of the applicant, the sealed cover was opened and it was found that the case of the applicant was not recommended he having secured less marks at the threshold. This position is evident from the applicant's own averments in the OA wherein he has referred to the assessment committee's proceedings. The assessment committee though awarded above prescribed benchmark for ACR/APAR, but in the interview the applicant secured only 10.4 marks out of 50, and was thus not recommended. He made representation dated 06.06.2007 followed by another

representation dated 10.12.2007. These representations were rejected vide order dated 18/19.12.2008. As a matter of fact, this is the period of commencement of limitation. The applicant did not challenge the above mentioned order and made yet another representation dated 08.05.2009. Even this representation was rejected on 18.07.2012. Even at this stage, the applicant did not move the Tribunal on any valid grounds. He made yet another representation on 10.01.2013 followed by representation dated 06.03.2013, whereupon the then Director favourably recommended his case on 25.03.2013. The competent authority, however, rejected the representation vide impugned order dated 03.06.2013 giving reference to the original rejection dated 18/19.12.2008.

7. As noticed hereinabove, this OA was filed on 11.02.2014, i.e., after a lapse of more than five years from the date of passing of the original order in December, 2008. Even when the OA was filed, no application for condonation of delay was filed. It is only when the respondents raised a plea of limitation in the counter affidavit on 17.09.2014 that the applicant realized his mistake and filed condonation application on 03.11.2016, i.e., more than two years from the date of filing of the written statement by the respondents raising the issue of limitation.

8. It is settled law that continued representations do not extend the period of limitation. Under Section 21 of the Administrative Tribunals Act, 1985 where a representation/appeal is filed and rejected, the aggrieved person is required to approach the Tribunal within one year from the date of rejection of the representation/appeal. Admittedly, the claim of the applicant was rejected on 18/19.12.2008. Thus, the limitation of one year expired on 17/18.12.2009. Any further representations made by the applicant are totally irrelevant. The applicant has, however, based his claim on the recommendations of the Director dated 25.03.2013 on his fifth representation, which was again rejected vide the impugned order dated 03.06.2013. Even when the plea of limitation was raised in the counter affidavit, the applicant took more than two years to file application for condonation of delay. The callous approach of the applicant does not in any manner provide basis for condonation of delay. It is settled law that limitation does not take away the right but only the remedy. The Hon'ble Supreme Court in *C. Jacob's* case (supra) and *State of Uttaranchal v Shiv Charan Singh Bhandari* (supra) clearly held that the Tribunal should refrain from ordering consideration of stale claims, and even if such direction is issued, authorities are still not required to allow stale claims.

9. In view of the above factual and legal scenario, we do not find any valid ground to grant the prayer for condonation of delay.

The application for condonation of delay is hereby dismissed, and consequently the OA is also dismissed.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/