Central Administrative Tribunal
Principal Bench, New Delhi

O.A. No.312/2014

Friday, this the 18th day of September, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B. K. Sinha, Member (A)

Ms. Nanak
s/o Bhoodev
Ward 196, S K Kalkaji, Delhi

..Applicant

(Ms. Shambhavi Sinha, Advocate for Mr. V K Singh)

Versus

1. Municipal Corporation of Delhi (South)
   Through Commissioner
   Vigilance Department
   26th Floor Civic Floor
   J L N Marg, Minto Road
   New Delhi-2

2. South Delhi Municipal Corporation
   Through Commissioner/Deputy Commissioner
   Green Park Extension, Sri Aurobindo Marg
   Green Park, New Delhi-16

3. Assistant Legal Officer (Vigilance)/SDMC
   26th Floor, Dr. S P M Civic Centre, J L Nehru Marg
   Minto Road, New Delhi-2

4. Deputy Commissioner
   Municipal Corporation of Delhi (South)
   Central Region, Lajpat Nagar
   New Delhi

..Respondents

(Ms. Kusum Sharma, Advocate and Mr. R K Shukla, Advocate)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

The applicant herein was proceeded against in RDA for major penalty proceedings vide RDA No.3/28/2000 for the charge that while working as Safai Karamchari at Lajpat Nagar, South Zone during the year 1999, he

failed to maintain devotion to duty and committed gross misconduct inasmuch as he manhandled and abused his senior, Mr. Krishan Kant Gupta, CSO on 1.9.1999, under the influence of alcohol. The Deputy DOI, i.e. the inquiry officer, after conducting departmental inquiry into the charges leveled against the applicant, submitted inquiry report concluding therein that the charges leveled against him were found proved. Nevertheless, after considering the explanation of the applicant during personal hearing given to him on 23.12.2011 and the fact that he admitted his misconduct, a lenient view was taken and the penalty of removal proposed in the show cause notice was reduced to stoppage of three increments with future effect. Admittedly, the applicant did not prefer any appeal against the said order.

2. The present Original Application was filed in January 2014, i.e., after two years of the date of penalty order passed on 20.1.2012. As has been provided in Section 21 of the Administrative Tribunals Act, 1985, the period of limitation for approaching the Tribunal is one year.

3. The Hon'ble Supreme Court in **D.C.S. Negi** v. **Union of India & others** (Civil Appeal No.7956 of 2011) decided on 7.3.2011, condemned entertaining of the Original Applications by the Tribunal in disregard of the limitation prescribed under Section 21 of the Administrative Tribunals Act 1985. In the said order, following observations were made:

> "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. .....

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)."

4. 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 as under:-

"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 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. 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)

5. Such view was also taken in the case of **C.Jacob** v. **Director of Geology & Mining and another**, JT 2008 (11) SC 280.

6. Learned proxy counsel for applicant tried to explain the delay by submitting that the applicant was in process of obtaining information under Right to Information Act, 2005. As has been ruled by the Hon'ble Supreme Court **S.S. Rathore** v. **State of Madhya Pradesh**, (1989) 4 SCC 582, even the unsuccessful representations would not bring the cause under limitation far less the applications given under Right to Information Act. 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. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue."

Ex facie, no application for condonation of delay has been filed by the applicant. *Ergo*, the prayer made in terms of paragraph 8 (3) of the Original Application is barred by limitation.

7. As far as the claim of the applicant regarding increments, promotional avenues and arrears of salary for the period from 1999 to 2001 is concerned, he may make a representation to the respondents within two weeks from the date of receipt of a copy of this Order and the respondents are directed to take decision in the same, within eight weeks thereafter, by passing a speaking order under intimation to the applicant. No costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

September 18, 2015
/sunil/