

**Central Administrative Tribunal
Principal Bench, New Delhi**

**O.A. No.1041/2015
M.A. No.964/2015 & MA No.2330/2017**

Friday, this the 1st day of December 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Uday Kumar Varma, Member (A)**

T.J. Nihalani, Age 68 years
S/o late Shri J.S. Nihalani

Ex-Executive Engineer(Civil), CPWD

Presently R/o B-1107, Gaur Green City

Indirapuram, Ghaziabad-201014.

..Applicant

(By Advocate:Ms. Menu Mainee)

Versus

Union of India through

1. Secretary, Ministry of Urban Development
Nirman Bhawan, New Delhi-110108.

2. Director General, CPWD
Nirman Bhawan, New Delhi-110108.

..Respondents

(By Advocate: Shri Gyanendra Singh)

O R D E R (ORAL)

Justice Permod Kohli:

MA No.2330/2017

This MA has been filed seeking permission for filing additional affidavit. For the reasons stated in the

Application the same is allowed. The additional affidavit is taken on record.

MA No.964/2015

2. This Application has been filed seeking condonation of delay without specifying any period for such condonation. In para 3 of the MA, the applicant has specifically mentioned that three representations were made on 18.07.2006, 29.09.2006 and 30.10.2006 requesting for grant of the benefit of Non Functional Junior Administrative Grade(NFJAG for short). Even in the prayer part of the OA the applicant has not mentioned the dates or period when he became entitled to the benefit of NFJAG. This seems to be a deliberate concealment by not mentioning the date of such entitlement. The grievance of the applicant is that he was denied benefit of NFJAG whereas his juniors were granted the benefit of the said grade vide office order dated 07.09.2005 whereby, as many as 134 Executive engineers (Civil) were given the benefit of NFJAG in the scale of Rs.12,000-16500. The name of the applicant should have been between Sl. No.59-60 which has not been considered. It is also

admitted case of the parties that the applicant was awarded censure on 10.07.2006 in disciplinary proceedings initiated against him. It seems that on account of the penalty of censure the applicant was not considered in the DPC held on 14.07.2005 for grant of NFJAG. The applicant made his first representation dated 18.07.2006 seeking benefit of the NFJAG grade. In response to the said representation, the respondents vide communication dated 01.11.2006 mentioned that on account of the disciplinary proceedings, the case of the applicant was placed in sealed cover by the DPC held on 14.07.2005. It is however, stated that the sealed cover proceedings of DPC dated 14.07.2005 cannot be acted upon. However, the case for grant of NGJAG again is being processed and will be submitted in the next DPC. Based upon this communication and subsequent RTI information received by the applicant on 03.09.2013, it is sought to be argued that in view of the assurance by the respondents that the case of the applicant would be considered in the next DPC, the limitation would not be attracted in the present case.

3. It is not in dispute that no DPC has been held till date whatever may be the reason. In the counter affidavit it is stated that on account of non settlement of the seniority dispute, the DPC could not be held. Even though this reply on the part of the respondents should not be construed to be a license to the applicant to remain silent for number of years. The applicant retired from service on 31.07.2007 but no action was taken by the him before retirement and even thereafter this Application was filed only on 12.03.2015, i.e., after about 10 years from the date juniors were promoted. There is no sufficient explanation tendered in the Application for condonation.

4. Be that as it may, the respondents in their counter affidavit mentioned that the representation so received from the applicant will be placed before the competent authority for decision and thereafter his case will be placed before the Screening Committee for recommendation for grant of benefit of NFJAG to the higher scale.

5. In the additional affidavit filed by the respondents on 02.06.2017, it is stated that the applicant has earned

Very Good ACR grading during the period 2004-2005 and 4 months during the period 2003-2004. All his gradings during the reckoning period are otherwise good i.e. below the bench mark. The gradings were communicated to the applicant vide Director's letter dated 19.08.2016. The applicant represented vide representation dated 24.08.2016 and 27.08.2016 for upgradation of his ACRs. The competent authority on consideration of the representation decided that there is no reason to interfere with the entries at this stage an intimation in this regard was given to the applicant vide Director's letter dated 01.02.2017. It is accordingly stated that in view of the below bench mark grading that the matter was placed before the Screening Committee and in view of the below Bench mark ACR gradings and the guidelines of the DOPT, the applicant was assessed as unfit for grant of NFJAG w.e.f. 11.07.2006.

6. In view of the above, though the applicant is not entitled to the relief prayed for and matter should have been dismissed on account of delay, however, keeping in view the above circumstances, the OA is dismissed on

merits along with all ancillary applications. No order as to costs.

(Uday Kumar Varma)
Member (A)

(Justice Permod Kohli)
Chairman

December 1, 2017

/vb/