

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

**OA-2755/2015
MA-2447/2015**

Reserved on : 24.05.2017.

Pronounced on : 26.05.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Praveen Kumar Yadav (Assistant Teacher)
S/o Sh. Bhagwan Yadav,
R/o 2/40-C, Vinod Puri,
Vijay Enclave, New Delhi-110045.
Aged around 29 years

.... Applicant

(through Sh. Sourabh Ahuja, Advocate)

Versus

1. GNCT of Delhi through
Its Chief Secretary,
Delhi Secretariat, IP Estate,
New Delhi-2.
2. Delhi Subordinate Services Selection Board
Through its Secretary,
GNCT of Delhi,
FC-18, Institutional Area,
Karkardooma, Delhi-92.
3. Director of Education,
Directorate of Education,
Old Secretariat,
Delhi-110054.
4. Commissioner,
North Delhi Municipal Corporation
(Erstwhile MCD)
Dr. SPM Civic Centre,
Pandit Jawahar Lal Nehru Marg,
Minto Road, New Delhi-110002.

.... Respondents

(through Sh. Vijay Pandita, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

MA-2447/2015 has been filed by the OA applicant for condonation of delay of 04 years and 208 days in filing the OA.

2. Briefly the facts of the case are that the applicant was a candidate for the post of Assistant Teacher (Primary) in the selection conducted by DSSSB. He appeared in the examination as an OBC candidate. However, the respondents did not find the OBC certificate submitted by him to be acceptable as it was not issued in the format prescribed. Consequently, he was considered as a UR candidate and did not make it to the merit list. It is an admitted fact that the result of the final selection was declared by DSSSB in December, 2008 and the applicant did not figure in the merit list.

3. The applicant has submitted that he preferred RTI application on 24.12.2008 to ascertain the reasons for his non inclusion in the final merit list. On 16.01.2009, the respondents intimated to the applicant that the marks secured by him in the selection were less than the last selected candidate in the UR category. According to the applicant, it was only then that he came to know that his OBC certificate has not been accepted by the respondents and he has been treated as a UR category candidate. The applicant also came to know from a

query made under the RTI Act on 21.01.2015 that more than 75 posts of Assistant Teacher (Primary) earmarked for OBC category were still not filled up. He then made a representation to the respondents on 14.05.2015. Thereafter, he has filed this OA on 27.07.2015.

4. The aforesaid application has been strongly opposed by the respondents. According to them, the result of the examination was admittedly published in December, 2008 whereas this O.A. has been filed in 2015 i.e. after more than 07 years. Learned counsel Sh. Vijay Pandita argued that although the applicant is claiming that the delay in filing the OA was only of 04 years and 208 days, actually the delay was much more as the cause of action for the applicant had arisen in December, 2008 when the result of the examination was declared and the applicant's name did not figure in the merit list. Sh. Pandita further argued that the applicant has not been able to give any satisfactory explanation for this delay. After publication of the result in December, 2008, according to the applicant's own admission, he had come to know by a reply received to his RTI application on 16.01.2009 that he has been treated as a UR candidate even then he did not approach the Tribunal for more than 06 years after that date. Sh. Pandita submitted that this was a fit case to be dismissed on the ground of limitation.

5. We have considered the submissions of both sides. The applicant has relied on the judgment of Hon'ble High Court of Delhi in the case of **DSSSB Vs. Lokesh Kumar & Ors.**, [WP(C)-5236/2012] dated 07.03.2013, in para-9 of which the following has been held:-

"9. From a perusal of the impugned decision it appears that the plea pertaining to the claim being barred by limitation, though pleaded in the reply filed but during arguments was not pressed before the Tribunal and this explains the Tribunal not having rendered any opinion thereon. It is settled law that a plea pertaining to the bar of limitation can be waived by a party. Besides, the cause of action would accrue to the respondent No.1 to sue when he learnt that the vacancy has gone abegging. In this connection it assumes importance to note that it was only on December 12, 2007 that the Selection Board intimated Delhi Jal Board that the recruitment was closed and the vacancy remained unfilled. This communication was admittedly not addressed to the respondent No.1 as pleaded by him in the Original Application when he found that nobody had been appointed as an Assistant Chemist in the OBC category he sought information under the Right to Information Act on October 21, 2008. He received a belated response on April 27, 2010, and suffice would it be to state that the Original Application was filed within a year thereafter. The limitation prescribed under Section 21 of the Administrative Tribunal's Act is one year from when the cause of action accrued."

5.1 On going through this judgment, we find that it cannot be of much help to the applicant because in the instant case the applicant had received reply to his RTI application on 16.01.2009 by which he had come to know that he had been treated as a UR category candidate by the respondents. Even then he did not file this OA for more than 06 years after that whereas in the judgment

cited above the OA had been filed within a year of receiving response to the RTI application.

6. We are of the opinion that the applicant has not been able to explain satisfactorily as to why he did not file the OA immediately on receiving the reply to his RTI Application on 16.01.2009. No cogent argument has been advanced for waiting uptill 2015 i.e. more than 06 years before filing this OA. Thus not only there has been inordinate delay in filing of this OA, this delay remains unexplained.

7. In view of the aforesaid, we are not inclined to condone the delay in filing the OA. The MA is dismissed. Consequently, OA is also dismissed on the ground of limitation.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/