

**Central Administrative Tribunal
Principal Bench**

OA No.1837/2012

New Delhi this the 5th day of November, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Shri Ashok Kumar Roy,
Under Secretary,
Staff Selection Commission,
Deptt. of Personnel & Training,
Block No.12, CGO Complex,
Lodhi Road, New Delhi-110003.

...applicant

(By Advocate : Shri K.N. Madhusudan)

Versus

1. Union of India,
Through Secretary to Govt. of India,
Department of Personnel & Training,
Room No.112, North Block,
New Delhi-110001.
2. Secretary to the Govt. of India,
Department of Supply,
Nirman Bhawan,
New Delhi-110001.
3. The Director, CS,
Department of Personal and Training,
Room No.209, Lok Nayak Bhawan,
New Delhi-110003.
4. Smt. Sadhna Khanna,
Under Secretary (Horti),
Room No.434,
Ministry of Agriculture & Cooperation,
Krishi Bhawan, New Delhi-110001.

...respondents

(By Advocate : Shri M.M. Hussain for Shri Nasir Ahmed)

ORDER (ORAL)

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

The applicant participated in Assistants Grade Examination of 1981 conducted by UPSC and secured 120th rank. He was allocated to the Central Secretariat Services i.e. CSS and was posted in the Department of Supply. He joined duty w.e.f. 25.08.1983, in terms of provisions of Central Secretariat Service Rules 1962. For promotion to the post of Section Officer, an Assistant is required to complete eight years of approved and continuous service in the grade. Since as on the cut off date i.e. 01.07.1991, he had not completed the required length of service i.e. the service was short by 37 days, his name could not be included in the Select List for the year and he was included in the Select List for the year 1992. One Smt. Sadhna Khanna, whose position in the Select List of Assistant was 240 was also found short of qualifying service and was not included in the select list for the year 1991 and was included in the select list for year 1992. Nevertheless, Smt. Sadhna Khanna, did not accept her ineligibility for inclusion in the select list and approached this Tribunal in OA No.1271/1999. The OA was allowed in terms of order dated 24.09.1999 which was upheld by Hon'ble High Court in WP(C) No.1311/2000 and affirmed by Hon'ble Supreme Court in C.A. No.8208/2011 in 2008.

2. In implementation of the judicial pronouncements (ibid), the DOP&T vide their order No.5/8/95-CS.I dated 22.07.2008 included the name of the applicant in the Select List of Section Officers for the year 1991 at Sl. No.66-A.

3. Thus the applicant filed the present OA on 24.05.2012 seeking the same benefit. Apparently, the OA has been filed after almost 15 years of original cause of action and approx. four years after the issuance of the order dated 22.07.2008, whereby the name of Smt. Sadhna Khanna was included in the Select List of SOs for the year 1991. Admittedly, by now, Smt. Sadhna Khanna has been promoted as Deputy Secretary and applicant himself is working as Under Secretary. The OA is hopelessly time barred. Learned counsel for applicant tried to explain the delay by submitting that Smt. Sadhna Khanna had not made him party in the OA No.1271/1999 filed before this Tribunal. However, during the dictation of the present order, he submitted that such is not his plea and the explanation of the delay is at page 120 of the paper book. The applicant got reply to his representation dated 27.08.2010 on 19.10.2010. Even after 19.10.2010, the applicant did not approach this Tribunal within one year. Besides, the only view taken by the respondents in the reply dated 19.10.2010 is that the inclusion of the name of the applicant in the Select List of 1991 after more than 15 years would amount to unsettling the settled seniority. The reply reads thus :-

“No.5/13/93-CS.I
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

Lok Nayak Bhavan, Khan Market,
New Delhi, dated the 19th October, 2010

To

Shri Ashok Kumar Roy,
Under Secretary (P&P),
Staff Selection Commission,
CGO Complex, New Delhi.

Subject : Inclusion in the Select List of Section Officer for the year 1991 – Representation of Shri Ashok Kumar Roy, Under Secretary (P&P), SSC 0 regarding.

Sir,

The undersigned is directed to refer to your representation dated 27th August, 2010 regarding inclusion in the Select List of Section Officer for the year 1991 against Seniority Quota.

2. Your representation has been duly considered in this Department. You were not considered for inclusion in the Select List of Section officer for 1991 against Seniority Quota as you had not completed the eligibility of 8 years as on 1.7.1991 as required under the CSS Rules, 1962. Any change in eligibility criteria even by one day will amount to relaxation of the relevant provision of the CSS Rules, 1962 and in your case retrospectively. There are a number of similar cases in each Select List year since the inception of CSS Rules, 1962. Consideration of such requests will amount to unsettling the settled seniority already fixed over a long period. Moreover, the Select List 1991 was finalised more than 15 years back. Hence, your representation itself is time barred. Ms. Sadhna Khanna was considered for her inclusion in Select List 1991 as per the orders of the Hon'ble Supreme Court and is applicable to the applicant only.

3. Therefore, it has not been found possible to accede to your request for inclusion in the Select List of Section Officer for the year 1991 against Seniority Quota.

Yours faithfully,

(K. Suresh Kumar)
Under Secretary to the Govt. of India”

4. The view taken by the respondents is in consonance with the judgement of Hon’ble Supreme Court in the case of **B.S. Bajwa & Anr vs State Of Punjab & Ors.**, JT 1998 (1) SC 57, 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. In view of the above, there is no infirmity in the stand taken by the respondents that the applicant cannot get the benefit of inclusion of his name in the Select List as on 01.07.1991 after inordinate delay.

6. In the case of ***Union of India & others v. A. Durairaj (dead) by LRs***, JT 2011 (3) SC 254, the Honble 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)

7. 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.”

8. In view of the aforementioned, we are not inclined to grant the relief sought in the OA at this belated stage. Accordingly, the OA is dismissed. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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