

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
M.A.NO.3132 OF 2017
(In OA No.2978/17)

New Delhi, this the 20th day of March, 2018

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND

HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

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Kuldeep Khapra,
Aged 32 years,
s/o Jagat Ram,
VPO-Nathupur,
District-Sonepat,
Haryana 131029

(Applicant in OA No.2978/17).....Petitioner

(By Advocate: Mr.Sachin Chauhan)

Vs.

1. Union of India,
Through its Secretary,
Govt. of India,
Ministry of Personnel, Public Grievances & Pension,
Department of Personnel & Training,
North Block,
New Delhi.
2. Staff Selection Commission,
through the Chairman, SSC,
Block No.12, CGO Complex, Lodhi Road,
New Delhi-3
3. The Regional Director (NR),
Govt. of India, Department of Personnel & Training,
Staff Selection Commission, Block No.12, CGO Complex,
Lodhi Road,
New Delhi-3 (Respondents in OA No.2978/17)....Opp.Parties.

(By Advocate: Mr.Ranjan Tyagi)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

O.A.No.2978 of 2017 was filed by the applicant on 25.8.2017

seeking the following reliefs:

- “(i) To quash and set aside the SCN dated 27.05.2013 and to further direct the respondent that the applicant be given appointment as per the selection process conducted by

SSC under Combined Graduate Level Examination (CGL), 2012 with all consequential benefits including seniority and promotion and pay & allowance.

Or/and

- (ii) Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant.”

2. MA No.3132 of 2017 has been filed by the applicant seeking condonation of delay in the filing of O.A.No.2978 of 2017. The respondents have filed a counter reply opposing MA No.3132 of 2017.

3. We have carefully perused the records and have heard Mr.Sachin Chauhan, learned counsel appearing for the applicant, and Mr.Ranjan Tyagi, learned counsel appearing for the respondents.

4. The applicant-petitioner was a candidate of CGLE-2012. After having qualified Tier I and Tier II Examination, he appeared in the interview. As per the revised result notice published by the respondent-Staff Selection Commission (SSC) on 30.5.2013, the applicant's result was withheld. The respondent-SSC, vide show-case notice dated 27.5.2013(Annexure A/1), called upon the applicant to show cause as to why his candidature should not be cancelled and he should not be debarred for five years from appearing in the Commission's examinations due to his indulgence in unfair means in Tier II examination of CGLE-2012. In the said show cause notice it was alleged that during post-examination and analysis of performance of the candidates in the objective type multiple choice question papers, it emerged that the applicant had resorted to copying in the said paper in association with other candidates who also took the same examination. The applicant, vide his reply/representation dated

11.6.2013(Annexure A/2), denied the allegations levelled against him in the show-cause notice dated 27.5.2013 and requested the respondent-SSC to consider his selection. While so, a large number of Original Applications, filed by similarly placed candidates, were allowed and the show-cause notices issued to them were quashed by the Tribunal. However, the Tribunal granted liberty to the respondent-SSC to issue fresh individual show cause notices by giving full details of alleged malpractices/copying, etc., and to pass appropriate speaking and reasoned orders after considering the representations received from those candidates. Accordingly, the respondent-SSC issued fresh show cause notices to those candidates. Before any decision could be taken by the respondent-SSC on the representations made by the candidates to the second show cause notices, those candidates again approached the Tribunal challenging the said fresh show cause notices. The Tribunal allowed a large number of applications, OA No.930 of 2014 and other connected O.As., **Sudesh, etc. vs. Staff Selection Commission and others** (supra) by quashing the second/fresh show cause notices and directed the respondent-SSC to declare the results of those candidates. The respondent-SSC challenged the Tribunal's decision by filing W.P. (C) No. 9055 of 2014 (**Staff Selection Commission & another vs. Sudesh**). The Hon'ble High Court of Delhi, vide judgment dated 19.12.2014, dismissed the said writ petition. Civil Appeal Nos. 2836-2838 of 2017 filed by the respondent-SSC against the Hon'ble High Court's judgment dated 19.12.2014(ibid) were dismissed by the Hon'ble Supreme Court, vide order

dated 19.7.2017. Review Application Nos. 2417-19 of 2017 filed by the respondent-SSC were also dismissed by the Hon'ble Supreme Court, vide order dated 31.10.2017.

5. In the above context, it was submitted by Mr.Sachin Chauhan, learned counsel appearing for the applicant that the respondent-SSC has not yet taken any decision on the applicant's representation/reply dated 11.6.2013. Being similarly placed as applicants in **Sudesh, etc. vs. Staff Selection Commission and others**(supra), the applicant is entitled to the benefit of the order passed by the Tribunal therein, which has attained finality after dismissal of writ petition by the Hon'ble High Court of Delhi and dismissal of Civil Appeals and Review Applications by the Hon'ble Supreme Court. Therefore, the delay, if any, in the filing of OA should be condoned and the OA considered on merits, otherwise the applicant shall be gravely prejudiced.

6. On the other hand, it was submitted by Mr.Ranjan Tyagi, learned counsel appearing for the respondents that the O.A. filed by the applicant on 25.8.2017, challenging the show-cause notice dated 27.5.2013, is hopelessly barred by limitation. In support of his submission, Mr.Ranjan Tyagi relied on the decisions of the Hon'ble Supreme Court in **S.S.Rathore vs. State of M.P.**, AIR 1990 SC 10; **Union of India vs. Ratan Chandra Samanta**, JT 1993(3) SC 418; **State of Haryana & ors vs. Miss. Ajay Walia**, JT 1997 (6) SC 592; and **D.C.S.Negi vs. Union of India**, SLP (C) CC No. 3709/2011.

6.1 In **S.S.Rathore vs. State of M.P.**(supra), the Hon'ble Supreme Court has have held that even in departmental appeal, the principle of merger will apply, and if a statutory Appeal is provided, limitation will start only from the date of final disposal of the appeal. Referring to the provisions of Section 20 of the Administrative Tribunals Act, 1985, the Hon'ble Supreme Court has held that the cause of action shall be taken to arise not from the date of the original adverse order, but on the date 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. 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.

6.2 In **Union of India vs. Ratan Chandra Samanta** (supra), the Hon'ble Supreme Court held thus:

“6. Two questions arise, one, if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects to be re-employed in railways has become recognized both by the Railways and this Court. But unfortunately the petitioners did not take any step to enforce their claim before the Railways except sending vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned Counsel for the petitioners that they may be permitted to produce their identity cards etc., before the opposite parties who may accept or reject

the same after verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour a person who has some right and for sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment, if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 and 1969 and retrenched between 1975 to 1979.”

6.3 In **State of Haryana & ors vs. Miss. Ajay Walia** (supra), the Civil Appeal was filed by the State of Haryana and others against the judgment passed by the Hon’ble High Court of Punjab directing the appellants to appoint the respondent forthwith on the post of Sub Divisional Clerk in any Department of the State of Haryana. The Honble Apex Court in paragraph 6 of the judgment held as follows:

“6. The facts reveal that requisition was made for recruitment only four candidates. The service election Board had no power and jurisdiction to select as many as 28 candidates and to recommend their names to various Departments for appointment. In the circumstances, when the Superintending Engineer, Hathnikund Circle had not requisitioned appointment of 8 candidates including the respondent, he rightly not acceded to and returned the list to the Board stating that he could not make any appointment as the ad hoc Sub Divisional Clerks already working had obtained stay from the High Court against their termination. In these circumstances, the direction asking the Superintending Engineer to appoint the respondent, issued by the High Court is obviously illegal. Moreover, the selection was made in 1982 i.e.

after an inordinate delay. Representation repeatedly given to various authorities do not furnish her fresh cause of action to file writ petition. The High Court is wholly unjustified to have entertained and allowed the writ application.”

6.4 In **D.C.S.Negi vs. Union of India** (supra), the petitioner's case was considered by the DPC, which met on 2.6.2003, for promotion to the Senior Administrative Grade, but he was not found suitable. The recommendations of the DPC were approved by ACC sometime in December 2003. Thereafter some of the officers junior to the petitioner were promoted to Senior Administrative Grade. After almost two years of his supersession, the petitioner made representation dated 26.10.2005, which was followed by another representation dated 7.12.2005 for reconsideration of his case for promotion to the Senior Administrative Grade, but the same did not appear to have been accepted by the competent authority. His case was considered in the DPC held on 2.3.2006 for promotion against the vacancies of the year 2006 and on being found suitable, he was promoted vide order dated 10.5.2006. Soon after his promotion, the petitioner approached the Tribunal in OA No.1316 of 2006. The Tribunal, after going through the records produced by the respondents, recorded a finding that the ACC had not disapproved the recommendations of the DPC and held that the petitioners grievance in the matter of non-promotion was untenable because he was unfit. The writ petition filed by the petitioner was also dismissed by the High Court. The Hon'ble Supreme Court dismissed the SLP. Before parting with the case, the Hon'ble Supreme Court considered 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 and observe as follows:

“A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. 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).

In the present case, the Tribunal entertained and decided the application without even adverting to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant.”

7. After having given our thoughtful consideration to the facts and circumstances of the case and to the rival contentions, we are not inclined to accept the plea raised by the respondents.

8. In their counter reply to MA No.3132 of 2017, the respondents have not specifically refuted the statement made by the applicant that his reply/representation dated 11.6.2013 (ibid) has not yet been considered and no decision has yet been taken by the respondents in his case pursuant to the show cause notice dated 27.5.2013(ibid). In view of this, and in view of the

facts that the decision of the Tribunal in **Sudesh, etc. vs. Staff Selection Commission and others**(supra) has attained finality, consequent to the dismissal of the writ petition by the Hon'ble High Court of Delhi, vide judgment dated 19.12.2014(ibid), and dismissal of the Civil Appeal and Review Application by the Hon'ble Supreme Court, vide judgments/orders dated 19.7.2017 and dated 31.10.2017 respectively, and that the applicant is similarly placed as applicants in **Sudesh, etc. vs. Staff Selection Commission and others**(supra), O.A. No.2978 of 2017 filed by the applicant on 25.8.2017 deserves to be considered by the Tribunal. The decisions cited by the respondents, being distinguishable on facts, do not go to support the plea of the respondents.

9. In the light of what has been discussed above, MA No.3132 of 2017 is disposed of, and O.A. No.2978 of 2017 is directed to be listed before appropriate Bench on 16.4.2018 for preliminary hearing on the question of admission.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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