CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3285 OF 2013
New Delhi, this the 2nd day of March, 2017

CORAM:
HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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1. Rajender Sharma,
s/o late Sh.Devi Charan,
R/o House No.1766, NH-4,
Old Faridabad, Haryana

2. Gajendeer Singh,
S/o late Sh.Kishan Lal,
R/o House No.108,
Mandawali Fazalpur,
Delhi-92

3. Anand Kumar,
S/o Sh.Dilip Singh,
R/o Village Katlupur, PO Nahari,
Distt. Sonepat, ,Haryana ..... Applicants

(By Advocate: Mr.Harpreet Singh)

Vs.

1. The Government of NCT of Delhi,
through its Chief Secretary,
Delhi Secretariat, Players Building,
I.P.Estate, New Delhi.

2. The Secretary & Commissioner (Dev.),
Development Department,
Government of NCT of Delhi,
5/9 Under Hill Road, Rajpur Road,
Delhi 110054 ..... Respondents.

(By Advocate: Ms.Sangita Rai)

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ORDER

***Per* Raj Vir Sharma, Member(J):**

The brief facts of the applicantsô case, as projected in the OA, are that they were employed by the Horticulture Unit, Development Department, on 5.2.1988, 21.6.1988 and in April 1989 respectively. Their services were illegally terminated on 26.4.1990, 8.2.1990 and 1.12.1989 respectively without assigning any reason. They moved the Labour Court challenging the termination of their services. The Presiding Officer, Labour Court-I, Delhi, passed awards in 1997 holding that services of the applicants were terminated illegally and unjustifiably. Therefore, the applicants were entitled to reinstatement with full back wages and continuity of services. The writ petitions filed by the respondents challenging the awards of the Labour Court were dismissed by the Honôble High Court of Delhi. After their reinstatement in service, the applicants were regularised in service only from the date of their re-joining, i.e., 1.9.1998, instead of 1.4.1991, i.e., the date from which their juniors were regularized in service. Another employee of the respondent-Department, viz., Sh. Rajinder Prasad, in similar circumstances, has been regularized in service w.e.f. 1.4.1991. The regularization of the said Sh.Rajinder Prasad has been done consequent to the judgment dated 19.12.2011 passed by the Honôble Delhi High Court in WP (C) No. 18943/2006 (**Horticulture Department, New Delhi Vs. Rajinder Prasad**). Like the case of the applicants, the services of Sh.Rajinder Prasad were also terminated by the respondent-Department and

the termination was held to be illegal by the learned Industrial Tribunal. Feeling discriminated against, the applicants made a representation dated 16.4.2013 to the respondents, seeking the relief of ante-dating of regularization of their service. Their representation dated 16.4.2013 having failed to elicit any response, the applicants filed the present O.A. on 11.9.2013, seeking the following reliefs:

> ñ(i) To call for the records of the case;
> (ii) To hold the decision of the respondents in treating the applicants as being regularized w.e.f. 1.9.1998 as discriminatory in nature and quash and set aside the same;
> (iii) Consequent to (ii) above, hold that the applicants are entitled for regularization w.e.f. 1.4.1991 as has been accorded to other similarly placed counterparts of the applicants.
> (iv) to grant the cost and expenses of the OA in favour of the applicant; and
> (v) To grant any other relief as deemed just an proper by this hon'ble Tribunal.ò

2. MA No.2480 of 2013 has been filed by the applicants seeking condonation of delay in filing of the present O.A. The applicants have mainly contended that on the passing of the judgment by the Hon'ble High Court of Delhi in WP (C) No. 18943/2006 (**Horticulture Department, New Delhi Vs. Rajinder Prasad**) on 19.12.2011, a fresh cause of action arose in their favour. Being similarly placed as Shri Rajinder Prasad, the applicants made representation dated 16.4.2013 seeking regularization of their services with effect from 1.4.1991. The applicants have referred to the decision of the Hon'ble Supreme Court in the case of **K.C.Sharma Vs.**

Union of India, (1997) 6 SCC 721, where the Hon'ble Supreme Court has held that where in similar cases relief had been granted, subsequent petitions should not be dismissed on limitation and that delay, if any, should have been condoned.

3. Opposing the O.A., the respondents have filed a counter reply. It is stated by the respondents that when there was no work at the site, the labourers were not engaged, and, therefore, the question of termination of their services did not arise. The applicants had left their job at their own free will. However, in compliance with the awards of the Labour Court, the applicants were taken back in service and were regularized in service from 1.9.1998, i.e., the date of their reinstatement/re-joining in service.

4. No rejoinder reply has been filed by the applicants.

5. Mr.Harpreet Singh, the learned counsel appearing for the applicants took us through the award dated 17.4.1997 passed by the Labour Court in the case of applicant no.1, as well as the judgment dated 19.12.2011 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 18943 of 2006 (**Horticulture Department, Delhi Vs. Rajinder Prasad & Ors.**), and submitted that in compliance with the awards passed by the Labour Court, when the respondents reinstated the applicant in service, their positions as on 26.4.1990, 8.2.1990 and 1.12.1989 (i.e., the dates from which their services were terminated) stood restored to original positions, and, therefore, the applicants were entitled to regularization of their services w.e.f. 1.4.1991 when the services of one Shri Rajinder Prasad were regularized.

6. *Per contra,* Ms.Sangita Rai, the learned counsel appearing for the respondents, relied on the decision of the Hon'ble Supreme Court in **State of Uttaranchal and another Vs. Sri Shiv Charan Singh Bhandari and others,** Civil Appeal Nos. 7328-7329 of 2013, decided on 23.8.2013, as well as the decision of the Tribunal in **Narender Singh Vs. The Government of NCT of Delhi and others,** OA No. 1859 of 2014, decided on 5.10.2015, to contend that the claim of the applicants is grossly barred by delay and laches, and, therefore, the O.A. is liable to be rejected on that score alone.

7. After having given our thoughtful consideration to the facts and circumstances of the case and the rival contentions, we have found no substance in the contentions of the applicant.

8. It is the case of the applicants that in compliance with the awards passed by the Labour Court, Delhi, the respondents reinstated them in service and regularized their services with effect from 1.9.1998. On a perusal of the records, we have found that the applicants claimed regularization of their services with effect from 1.4.1991, instead of 1.9.1998, for the first time by making a representation to the respondent-Department only on 16.4.2013, i.e., after about 15 years of regularization of their services. The cause of action, if any, had arisen on 1.9.1998 when their services were regularized. If at all they had any grievance with regard to non-regularization of their services with effect from 1.4.1991, the applicants ought to have approached the departmental authorities within a reasonable

period thereafter, and approached the Tribunal by filing an application under Section 19 of the Administrative Tribunals Act, 1985, within the prescribed period of limitation, in the event of their being unsuccessful in getting their grievance redressed in the hands of the departmental authorities. The applicants having not done so, their claim for regularization of services with effect from 1.4.1991 with all consequential benefits, such as, pay fixation, promotion, etc., is clearly hit by the doctrine of delay and laches.

9. In the case of **Horticulture Department, New Delhi Vs. Rajinder Prasad**), after the Industrial Tribunal passed the award directing the Department to reinstate the respondent-workman in service along with 50 per cent back wages in ID No.51/1990, and after W.P. (C) No. 1121 of 1999 filed by the Department was dismissed by the Hon'ble High Court of Delhi, the Department reinstated the respondent-workman with effect from 7.8.2002. While reinstating the respondent-workman in service, the Department also regularized his service with effect from 7.8.2002. However, the respondent-workman felt that he should have been regularized from the date of his initial appointment and, therefore, he raised another industrial dispute which was also referred to the Industrial Tribunal, vide I.D.Case No.138 of 2005. The Industrial Tribunal, vide award dated 8.8.2006, directed the Department to treat the respondent-workman as its regular employee from 1987-88, in which, as per the conclusion arrived at by the Tribunal, other employees who were admittedly junior to the respondent-workman had been regularized. The Department filed W.P. (C) No.18943 of

2006 before the Hon'ble High Court of Delhi, challenging the award dated 8.8.2006 passed by the Tribunal. Disposing of the writ petition, the Hon'ble High Court held thus:

> ñ9 After having heard the rival submissions of the counsel for the parties I am of the view that as far as the grant of relief of regularization to the workman by the Industrial Tribunal from 1987-88 is concerned, the same cannot be sustained in view of the categorical stand taken by the workman himself in his claim statement that he had been discriminated against by the management by not regularizing him with effect from 1st April, 1991. Just because the management's witness had stated during his cross-examination that some workers had been given the relief of regularization from 1987 the workman could not get any relief on the basis of that statement. What relief the workman was to get had to be decided on the basis of his own claim statement since the management had been called upon to meet the case of the workman as was pleaded by him and not what emerged during evidence of the management.
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> 7. However, as far as the management's case that the workman was entitled to be regularised with effect from 7th August, 2002 from which date he was reinstated in service cannot be accepted. I am in full agreement with the submission of the learned counsel for the workman that the effect of setting aside of the termination of his service by the Industrial Tribunal would be that he would be deemed to have been in continuous employment of the management from the date of termination order and, therefore, he had to get all the benefits which his co-employees had got and he could not be denied that benefit on the ground that in the year 1991 he was not in service.
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> 8. Thus, this writ petition is disposed of by modifying the award of the Industrial Tribunal to the extent that now the workman is granted the relief of regularization with effect from 1st April, 1991 and not from 1987-88. However, the workman would only be entitled to financial benefits with effect from 1st April, 1991 and no seniority over those who were regularized already.ò

10. In the present case, after their reinstatement and regularization of service with effect from 1.9.1998, the applicants chose not to approach the respondent-Department or any judicial forum. After about 15 years of

their reinstatement and regularization of their services, the applicants, for the first time, made the representation dated 16.4.2013 and filed the instant OA on 13.9.2013 for regularization of their service with effect from 1.4.1991 with consequential benefits, such as, pay fixation, promotion, etc. It is their plea that on the passing of the judgment dated 19.12.2011 in **Horticulture Department, Delhi Vs. Rajinder Prasad & others** (supra), a fresh cause of action arose in their favour.

11. In **State of Karnataka & Ors. v. S.M.Kotrayya & Ors.,** (1996) 6 SCC 267, the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached the Hon'ble Supreme Court. Their Lordships, after considering the matter, observed as under :

> "é é ..it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

12. In **Jagdish Lal & Ors. v. State of Haryana & ors.** (1997) 6 SCC 538, the Hon'ble Supreme Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit, and that the delay disentitles a party to the discretionary relief under Article 226 or Article 32 of the Constitution of India.

13. In **Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another**, (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades, the respondent-workmen had remained silent, mere making of representations could not justify a belated approach.

14. In **C. Jacob v. Director of Geology and Mining and another**, (2008) 10 SCC 115, the Hon'ble Supreme Court observed thus:

> ñEvery representation to the Government for relief may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations cannot furnish a fresh cause of action or revive a stale or dead claim.ò

15. In **Union of India and others v. M.K. Sarkar, (2010) 2 SCC 59,** the Hon'ble Supreme Court, after referring to **C. Jacob's case** (supra), has ruled that when a belated representation in regard to a óstaleô or ódeadô issue/dispute is considered and decided, in compliance with a

direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action, or reviving the ódeadô 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 courtôs direction. Neither a courtôs 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.

16. In **Bharat Sanchar Nigam Limited v. Ghanshyam Dass and others,** (2011) 4 SCC 374, the Honôble Supreme Court reiterated the principle stated in **Jagdish Lal v. State of Haryana,** (1997) 6 SCC 538, and observed that as the respondents preferred to sleep over their rights and approached the Tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

17. The Honôble 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:

> ñBefore 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, which reads as under:

ñ21. Limitation ï

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where ï

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.ò

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.ò

18. In **State of Uttaranchal and others Vs. Sri Shiv Charan Singh Bhandari and others** (supra), after referring to its earlier decisions in **Karnataka Power Corpn. Ltd. through its Chairman & Managing Director Vs. K.Thangappan and another** (supra)**, C.Jacob Vs. Director of Geology and Mining and another** (supra)**, Union of India and others Vs. M.K.Sarkar** (supra)**, Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass and others** (supra)**,** and some other decisions, the Hon'ble Supreme Court has held there may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. Equality has to be claimed at the right juncture and not after expiry of decades.

19. In **Narender Singh Vs. The Government of NCT of Delhi and others** (supra), the Tribunal considered the claim of another employee working in the same Horticulture Department, who was similarly placed as the applicant in the present case. The applicant in that case claimed regularization of his services with effect from 10.1.1988, instead of 19.5.1998 when he was reinstated in service and was also regularized in service. After about 15 years of regularization of his service, the applicant made a representation on 8.4.2013 claiming regularization of his service with effect from 10.1.1988. Considering the facts and circumstances of the case, and following the decisions of the Hon'ble Supreme Court, cited supra, the Tribunal held that the claim as raised by the applicant in the O.A. was clearly barred by delay and laches, and, accordingly, dismissed the O.A.

20. After having considered the facts and circumstances of the present case, in the light of the above judicial pronouncements, we have no hesitation in holding that the claim as raised by the applicant is clearly barred by delay and laches. Accordingly, MA No.2480 of 2013 is rejected and the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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