

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.3064/2014
O.A.No.4350/2013

Order Reserved on: 11.05.2017
Order pronounced on 22.05.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Shri Ashish Shome
S/o Late Shri Sisir Shome
R/o 173-F, 1st Floor
Chitragupta Road
Aram Bagh
New Delhi – 110 055. ... Applicant

(By Advocate: Sh. Medhanshu Tripathi with Sh. A.K.Singh)

Versus

1. Union of India through Secretary
Ministry of Home Affairs
North Block
New Delhi – 110 011.
2. The Director General
Bureau of Police
Research & Development
Ministry of Home Affairs
C.G.O.Complex
New Delhi.
3. Principal
Central Detective Training School
30, Gorachand Road
Kolkata – 700 014.

4. Assistant Director (Admn.)

Bureau of Police
 Research & Development
 Ministry of Home Affairs
 Block-1, 3rd & 4th Floor
 C.G.O.Complex
 New Delhi.

5. Administrative Officer

Bureau of Police
 Research & Development
 Ministry of Home Affairs
 Block-1, 3rd & 4th Floor
 C.G.O.Complex
 New Delhi.

6. Sh. Virender Singh

Sub Inspector
 Bureau of Police
 Research & Development
 Computer Section
 4th Floor, Block-11
 C.G.O.Complex
 Lodhi Road
 New Delhi-03.

... Respondents

(By Advocate: Shri Rajesh Katyal)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, an Head Constable in the respondent-Bureau of Police Research and Development, filed the OA seeking the following relief:

"a. Quash and Set aside the impugned rejection order/letter dated 13/09/2011 and 25/01/2011;

- b. The appellant may be promoted w.e.f. 16/06/1991 with all consequential benefits;
- c. Direct the respondent to give ad-hoc promotion to the applicant according to service seniority as per seniority list of 16/05/1994 in the interest of justice; and
- d. Any other relief as this Hon'ble Tribunal deems fit and proper in the circumstances of the present case."

2. The applicant has also filed MA No.3064/2014 seeking condonation of delay of 5010 days in filing the OA.

3. The learned counsel appearing for the applicant mainly contended that in fact there is no delay in filing the OA but still the applicant craves leave to condone the delay of 5010 days when first time cause of action arose, i.e., when a junior to the applicant was promoted to the post of Head Constable. He further contended that promotion of a junior is a continuous cause of action and that every time a junior to the applicant was promoted a fresh cause of action arose and hence, the MA is liable to be allowed.

4. The learned counsel placed reliance on the following decisions in support of his submissions:

i. **Ram Lal, Patwari v. State of Punjab & Another**, CWP No.15385/2004, decided on 17.05.2006, [2006] RD-P&H 3696 (4 July 2006).

ii. **R.K.Kapoor v. Union of India**, W.P.(C) No.3992/2011, decided on 23.04.2012 by the Hon'ble High Court of Delhi.

5. Per contra, the learned counsel for the respondents submits that the OA is delayed abnormally and no valid reasons for the delay are shown and that the delay also not properly calculated and also placed reliance on **P.K.Pandey v. Union of India**, 2011(6) AD (Delhi) 350.

6. Heard Shri Medhanshu Tripathi and Shri A.K.Singh, the learned counsel for the applicant and Shri Rajesh Katyal, the learned counsel for the respondents on MA No.3064/2014, and perused the pleadings on record.

7. The brief facts as narrated in the OA are that the applicant was appointed as Constable in CTDS, Kolkotta, on 18.03.1985. A final seniority list of Constables was issued vide Annexure A3 dated 16.05.1994, wherein the applicant was shown at Sl.No.1, whereas the names of S/Shri Bhale Ram, R.K.Mandal, and Chhotu Ram were shown at Sl.Nos.2, 4 and 6 respectively. Though the said Bhale Ram and R.K.Mandal and Chhotu Ram were juniors to the applicant, but they were promoted as Head Constables in the year 1991 itself. The persons figured at Sl.Nos.5, 7 and 8 were also promoted ignoring the claim of the applicant. Finally, the applicant was promoted as Head Constable on 27.01.1998.

8. The aforesaid juniors of the applicant were further promoted to the post of Sub Inspectors and Inspectors ignoring the seniority of the applicant as was shown in Annexure A3, dated 16.05.1994.

9. The applicant filed OA No.2627/2012 seeking identical reliefs to that of the instant OA and the same was dismissed as withdrawn on 12.09.2013 as under:

"When the matter was taken up for hearing, a preliminary objection was raised by Shri Rajesh Katyal, learned counsel appearing on behalf of the respondents, on the ground that the Original Application is hopelessly time barred as the

applicant has challenged the order of Government of India, Ministry of Home Affairs, dated 2.7.1998 and seniority list of 16.5.1994 without giving any appropriate explanation for such an abnormal delay.

2. In reply, learned counsel for the applicant submitted that the applicant is mainly aggrieved by the order of the respondents dated 25.1.2011, which is a reply of the respondents to the representation of the applicant dated 24.11.2010. He further submits that the applicant in fact has claimed seniority in the gradation list. He, however, submits that liberty may be given to him to withdraw this Application to enable him to file fresh one with appropriate prayers and pleadings. The prayer is allowed.

3. The Application is dismissed as withdrawn at this stage with aforesaid liberty."

10. As observed above, the earlier OA of the applicant was permitted to be withdrawn with liberty to file a fresh one with appropriate pleadings particularly with regard to the explanation for the abnormal delay.

11. But the applicant failed to give any valid explanation and reasons for the abnormal delay of 5010 days, even in the instant MA or OA and on the other hand, only contending that every promotion of his junior, is a fresh cause of action and, hence, no delay.

12. A careful perusal of the aforesaid decisions relied upon by the learned counsel for the applicant clearly indicates that in none of those decisions it was held that promotion of a junior is a continuous cause of action. On the other hand, in the facts peculiar to those cases and after satisfying with the reasons explained for the delay, the delay was condoned. In the instant case, the applicant has failed to satisfy this Tribunal regarding the abnormal delay of 5010 days. Hence, the said decisions have no application to the facts of the present case.

13. It would be relevant to refer to the judgments of Hon'ble Supreme Court on the point of limitation:

14(a). In **Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation & Another**, (2010) 5 SCC 459, it was held as under:

"8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate....."

14(b) In **Lanka Venkateswarlu (D) by LRs v. State of A.P. & Others**, (2011) 4 SCC 363, it was held that "the concepts such as 'liberal approach', 'justice oriented approach', 'substantial justice', cannot be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay".

14(c) In **State of Tripura v. Arabinda Chakraborty**, (2014) 5 SCALE 335, the Hon'ble Apex Court held that

"18. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was

decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done.”

(Emphasis added)

14(d) In **D.C.S. Negi v. Union of India & Ors.** decided on 07.03.2011 in SLP (C) No.7956/2011(CC No.3709/2011) the Hon’ble Apex Court, while dismissing the Appeal, has emphasized that the Administrative Tribunal established under the Act is duty bound to first consider whether the application is within limitation, and that 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). The relevant observations of the Hon’ble Apex Court are extracted below:

“A reading of the plain language of Section 21 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).”

15. In **P.K.Pandey** (supra), the Hon’ble High Court of Delhi held as under:

"10. It is not in dispute that as per provisions of Section 21 of the Central Administrative Act, is provided for an aggrieved person to challenge the impugned action on the part of the Department. The contention of the petitioner that cause of action arose only on the date when the seniority list was issued is totally misconceived. Once, the promotion order is not challenged, the promotion is to be treated as valid on that action and the seniority list was only consequential. Therefore, cause of action arose to the petitioner when the promotion orders were issued on 26th October, 1994 as rightly point out by the Tribunal. From this date, the petitioner, however, did not make any representation against this order of promotion nor approached the Tribunal within a period of one year W.P.(C) No.4023/2000 Page 8 of 8 from the date of such order. Such an O.A. was thus clearly time barred and rightly dismissed on this ground. We are also of the opinion that the Tribunal was right in observing that it cannot be believed that the petitioner was not aware of the promotion of the respondent no.3 as Professor. The petitioner as well as the respondent no.3 are under the employment of same employer in the said Department. Merely because at given point of time they were posted in two different hospitals would not afford any proper explanation or justification to the petitioner to claim the ignorance about the promotion of respondent no.3 No such plea was ever taken in the representations made by the petitioner. It was only when the respondent took objections of O.A. being time barred in the reply filed to the O.A, the petitioner came out with the plea that he was unaware of the promotion of respondent no.3 as Professor which cannot be accepted. Since the O.A. filed by the petitioner has rightly been dismissed as hit by limitation under Section 21 of the Act, it is not necessary to go into the merits. This petition is dismissed on this ground alone."

16. In the circumstances and for the aforesaid reasons, the MA is dismissed with costs of Rs.10,000/- payable to the Delhi Legal Services Authority within four weeks from the date of receipt of a copy of this order. Consequently, the OA is also dismissed.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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