

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

O.A. No.4112/2014

Monday, this the 25th day of September 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

A V Prema Nath
Aged about 44 years
Joint Secretary
s/o Late Mr. A Venkat
Department of Food, Supplies & Consumer Affairs
Govt. of NCT of Delhi, K Block
Vikas Bhawan, I P Estate
New Delhi - 2 ..Applicant
(Mr. M. K. Bhardwaj, Advocate)

Versus

1. Union of India through Secretary
Ministry of Home Affairs
North Block, New Delhi
 2. Govt. of India
Through Secretary
Ministry of Personnel & Public Grievances
Department of Personnel & Training (DoPT)
North Block, New Delhi - 1
 3. Union Public Service Commission
Through Secretary
Dholpur house
Shahjahan Road, New Delhi - 3 ..Respondents
- (Mr. Rajinder Nishcal and Mr. Ashish Nischal, Advocates)

: O R D E R (ORAL)

Justice Permod Kohli:

Vide order dated 01.05.2017, this Tribunal dismissed M.A.
No.3597/2014, which was filed for condonation of delay in filing the

O.A., for not specifying the exact number of days. However, while dismissing the said M.A., the applicant was granted liberty to file fresh M.A. seeking condonation, if so advised. The case was listed thereafter twice but no Application for condonation of delay has been filed by the applicant. This OA is liable to be dismissed on that count itself.

2. Shri M. K. Bhardwaj, learned counsel appearing for the applicant, however, submits that notwithstanding the fact that he has not filed a fresh application seeking condonation of delay, the OA is otherwise within the period of limitation and may be considered accordingly.

3. We have heard learned counsel for the applicant in this regard.

4. The applicant has sought following reliefs in the OA:-

“(i) To declare the action of respondents in not appointing the applicant to IAS on the basis of CSE 1995 onwards as illegal, arbitrary and issue appropriate directions for appointing the applicant to IAS on the basis of CSE 1995 onwards with all consequential benefits.

(ii) to allow the OA with cost.

(iii) pass any further orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

5. The applicant was appointed on the basis of Civil Services Examination, 1995 (CSE) under OBC and physically handicapped category. His rank was 437 in the combined merit list. In the said examination, he was allotted DANICS cadre. He again appeared in

CSE, 1997 to improve his prospects. This time, he secured 403rd rank in the combined merit list. The applicant approached the Tribunal seeking benefit of 3% reservation as per the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act. The Tribunal vide its judgment dated 12.05.2000 rejected the request of the applicant holding that in Civil Services Examination, 1997, 3% disability quota had not been provided. The applicant filed a WP (C) No.8543/2009 before the Hon'ble Delhi High Court. While disposing of the said writ petition vide order dated 27.04.2009, the Hon'ble High Court made following observations:-

“No doubt, whereas on the one hand this is the legal position, on the other hand it would be difficult to entertain any challenge to the judgment dated 12.05.2000 by the petitioner by means of this writ petition filed almost 9 years thereafter. Therefore, this Court cannot issue any direction in this behalf. However, taking into consideration the totality of the facts and circumstances and particularly going by the observations of the Tribunal even in para-14 of the impugned judgment, we are of the opinion that ends of justice would be sub-served if the petitioner makes a representation to the respondents for allocation of appropriate service on the premise that there was a necessity to have the 3% quota reserved for disabled persons even in CSE, 1997 examination, which has since been done as contended by the learned counsel for the petitioner. Since the petitioner is admittedly disabled and the rights of the disabled persons are not only statutory in nature provided under the Disability Act but are also taken on a higher pedestal by equating with human rights, as per various UN declarations and other international covenants to which India is a signatory, we hope that the representation of the petitioner shall be considered objectively without being influenced by the observation of the Tribunal in para-12 of the impugned judgment. We are also informed that the petitioner has, in fact, made a representation dated 16.04.2009 wherein he has sought benefits for CSE examinations pertaining to the years 1995, 1996, 1997 & 1998 in terms of the aforesaid judgments of this

Court, which shall be decided by the respondents by passing speaking orders within two months from today.

The writ petition stands disposed of in the aforesaid terms.”

The aforesaid judgment was, however, modified vide order dated 08.05.2009. The modification was on account of mistake in recording the date of representation and the year of passing of the examination. The High Court accordingly made necessary corrections and issued the following directions:-

“In this behalf, we may only clarify that the petitioner has taken up this aspect vide representation dated 16.04.2009 and, therefore, it would be open to the respondents to consider this submission of the petitioner as well.”

Consequent upon the aforesaid directions/clarification, the respondents passed order dated 29.06.2009 rejecting the representation of the applicant in the following manner:-

“13. Now, therefore, in view of the fact that the judgment of Hon’ble High Court in the case of Shri Ravi Prakash Gupta, which forms the basis for judgment in the case of Shri Prema Nath has been challenged before the Hon’ble Supreme Court on the ground that there is no carry forward vacancy of IAS for PH category as this service was identified for reservation for persons with disability only in CSE-2004 (to be made applicable from 2005), the request of Shri Prema Nath made in the representations is not liable to be accepted and accordingly the same are rejected.”

The applicant again approached the Hon’ble High Court of Delhi by filing CM Appl.9417/2009 & CM Appl.13326/2010 in W.P. (C) No.8543/2009 (Annexure A/3) wherein following directions were issued:-

“We thus set aside the orders dated 29th June, 2009 and direct the Department to give the same treatment to the petitioner as

given to Sh. Ravi Prakash Gupta and if it is found that there was a vacancy for the handicapped persons in CSE 1995, which was not filled up, the petitioner shall be offered appointment to the said post.

Needful be done within two weeks.

Applications stand disposed of.”

6. The respondents filed an MA before the Hon’ble High Court of Delhi seeking to place on record subsequent events with regard to the registration of an FIR against the applicant while he was working as a DANICS Officer, and appropriate directions be issued. Conceding the same, two Petitions were filed on 22.11.2010 being CM Nos.20431/2010 and 20790/2010. Both these petitions were disposed of by the Hon’ble High Court with the following observations:-

“11. We refrain from expressing any opinion on the controversy for the reason we feel that the issue cannot be decided by way of an interim application in a disposed of matter and requires a substantive adjudication before a proper forum. We may simply note that the order dated 1.10.2010 was passed without notice to the DOPT and had notice of the application been issued to DOPT, it could have been brought to the notice of this Court that the petitioner is an accused in an FIR in respect whereof sanction has been sought to prosecute the petitioner. Thus, at the appropriate forum if the petitioner so litigates, the said fact would be taken note of.

12. We may note that the Foundation Course at LBSNAA, Mussorie is over and thus, the petitioner in any case will have to wait for the Foundation Course which would be conducted the next year and thus we express a hope that the Forum where the petitioner were to initiate a substantive action would decide the matter as expeditiously as possible and preferably by September 2011.

13. With the observations aforesaid, expressing no conclusive view on the issue, relegating the petitioner to avail

substantive remedy as per law, we dispose of both the applications.”

7. It is contended by Mr. Bhardwaj that in view of the above order passed by the Hon’ble High Court of Delhi that the applicant has been permitted to avail substantive remedy as per law, the present OA has been filed on 18.11.2014, i.e., after three years and eleven months without explaining the sufficient cause for delay. It is also relevant to note that in para 12 of the High Court, the Tribunal was asked to decide the matter as expeditiously as possible and preferably by September, 2011. Since the applicant filed this OA after almost four years of the date of passing of the order by the High Court, the directions issued by the High Court became redundant in absence of any application for condonation of delay and sufficient explanation for delay in filing the present OA in respect to the stale matter. The OA cannot be treated within limitation.

8. This OA is thus dismissed being barred by limitation as prescribed under law.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/