

**Central Administrative Tribunal  
Principal Bench**

OA No. 4198/2016  
MA No. 3775/2016

This the 23<sup>rd</sup> day of August, 2017

***Hon'ble Ms. Nita Chowdhury, Member (A)***

Kharag Singh  
S/o Late Sh. Bhudan Singh,  
H.No. L-513, Gali No.7,  
Sangam Vihar, New Delhi-110080.

... Applicant

(By Advocate: Mr. A.K.Mishra)

Versus

Delhi Development Authority  
Through its Vice Chairman,  
Vikas Sadan, INA, New Delhi.

... Respondents

(By Advocate: Mr. D.S.Mahendru)

**ORDER (ORAL)**

Heard the learned counsel for the parties.

2. Present MA has been filed seeking condonation of delay.
3. Briefly stated, the facts of the case are that the applicant was appointed in the respondent-department as Khalasi on 06.02.1985. On 16.07.1985 a complaint was lodged against him and a criminal case was registered u/s 302, 307 IPC vide FIR No.73/1985. Due to his detention in custody he was

suspended from service with effect from 30.10.1985. On 16.03.1990 the conviction order was passed by the Additional Sessions Judge, Bulandshahar sentencing the applicant to undergo life imprisonment. Applicant preferred an appeal before the Hon'ble High Court of Allahabad and on 20.03.1990 he was released on bail. On 26.04.1990 the respondents terminated the applicant's services with immediate effect. On 16.07.1990 applicant requested the respondents to keep him under suspension till the decision of the case and the order of termination may be withdrawn. After a lapse of 26 years applicant has sent a representation dated 22.09.2016 to the respondents for release of his dues which were withheld due to his suspension.

4. Learned counsel for the applicant submits that respondent has ignored the representation of the applicant in respect of payment of suspension allowance and other allowances as delaying the payment of legal claim for more than five years is illegal, arbitrary and unjustified.

5. On the other hand, learned counsel for respondent has vehemently opposed the contention of the applicant taking a preliminary objection as the matter in this OA is barred by limitation. It is submitted that applicant has not shown sufficient cause as to why 26 years inordinate delay occurred in

filing the present OA and this delay is fatal and cannot be condoned. It is denied that applicant was not paid any suspension allowance whereas he was paid suspension allowance till his termination. It is further submitted that present case is hopelessly barred by limitation and deserves to be dismissed.

6. I have carefully considered the rival contentions of the parties and perused the material placed on record.

7. There is no explanation furnished by the applicant as to why he chose to wait for 26 long years for filing this OA. The period of limitation prescribed for filing an OA before the Tribunal is one year. In the case of **D.C.S. Negi v. Union of India & others** (Civil Appeal No.7956 of 2011) decided on 7.3.2011, the Apex Court viewed that the Tribunal should give due regard to Section 21 of Administrative Tribunals Act, 1985.

Relevant portion of said judgment reads thus:-

“Before 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:-

“21. Limitation -

(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 -

(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”.

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 advertent 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 abdicates 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.”

8. Similarly, in **Ramesh Chand Sharma etc. vs. Udham Singh Kamal & Ors.**, 2000 (2) AISLJ S.C. 89, Hon'ble Supreme Court held as under:

“7. On perusal of the materials on record and after hearing Counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21 (3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in

view of the statutory provision contained in Section 21 (1) of the Administrative Tribunals Act, 1985.”

9. With regard to delay the Hon'ble Apex Court in the case of **Bhoop Singh vs. Union of India and others**, 1992 (3) SCC 136

has held as under:

“2. Petitioner, Bhoop Singh, claiming to be a similarly dismissed police constable filed O.A. No. 753 of 1989 in the Central Administrative Tribunal praying for reinstatement in service and all consequential benefits on the ground that his case and claim is similar to that of the police constables who had succeeded in the earlier rounds of litigation. **The Tribunal has rejected the petitioner's application on the ground that it is highly related and there is no cogent explanation for the inordinate delay of twenty-two years in filing the application on 13-3-1989 after termination of the petitioner's service in 1967.**

8. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed....”

10. Further, the Hon'ble Supreme Court in the case of

**Karnataka Power Corporation Ltd. through its Chairman  
and Managing Director and another vs. K.Thangappan and**

**anr.**, 2006 (4) SCC 322 has held as under:

“5. The factual position as noted above clearly shows that for nearly 2 decades the respondent No.1-workman had remained silent. As rightly pointed out by learned counsel for the appellants even in the representations made in 1997 and 1998 there was no reference to the representations claimed to have been made in 1982 and/or 1989. Even if that would have been made, there was considerable delay even in making the representations. There is no dispute that mere making of representations cannot justify a belated approach.

6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prasad v. Chief Controller of Imports and Exports* (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.”

11. The only explanation tendered by the applicant with regard to inordinate delay is that he had lost his mental balance for a period of 26 years. No medical record or proof of this statement has been furnished. Hon’ble Apex Court on the issue of inordinate delay in claiming one’s right, in the case of **Ratan**

**Chandra Sammanta & ors. vs. Union of India & ors., AIR**

1993 SC 2276, has held as under:

“3. Delay itself deprives a person of big remedy available in law. In the absence of any fresh cause of action of any legislation, a person who has lost his remedy by lapse of time loses his right as well.”

12. In view of the fact that the applicant has agitated his claims after an unexplained delay of 26 years and in the light of the ratio of law laid down by the Hon'ble Supreme Court in the case of **Ratan Chandra Sammanta** (supra), I do not find any merit in the MA and accordingly dismiss it.

13. In view of the above order passed in MA, OA also stands dismissed. No order as to costs.

( Nita Chowdhury )  
Member (A)

‘sd’