CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.1887 of 2014
MA 388 of 2013

Orders reserved on : 05.10.2018

Orders pronounced on : 10.10.2018

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

Shri Maharaj Singh,
s/o Sh. Nand Ram,
r/o Village Mamu,
Post Goraha, Distt. Kash Ganj

....Applicant

(By Advocate : Ms. Meenu Mainee)

VERSUS

Union of India : Through

1. General Manager,
   North Eastern Railway,
   Gorakhpur.

2. Divisional Railway Manager,
   North Eastern Railway,
   Izzat Nagar

3. Section Engineer – II, (P-Way),
   North Eastern Railway,
   Kannoj.

.....Respondents

(By Advocate : Shri Kripa Shankar Prasad)

O R D E R

By filing this OA, the applicant is seeking the following reliefs:-

> "8.1 That the Hon'ble Tribunal may also be pleased to allow this application and direct the respondents to re-engage the service of the applicant from the date from which his juniors have been re-engaged and give all the consequential benefits like seniority, promotion, back wages etc.

8.2 That the Hon'ble Tribunal may also be pleased to award any other or further relief which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

8.3 That the cost of these proceedings may kindly be granted in favour of Applicant and against the Respondents."

2. Brief facts of the case are as stated in the OA are that the applicant was initially engaged on 24.2.1979 and had worked as casual labour upto May 1986 for intermittent period and his name was registered in live casual labour register at serial No.14 which was maintained in the unit of Assistant Engineer, Fatehgarh. According to the applicant, he had also acquired temporary status. Since the applicant worked for quite long period but he was not re-engaged although his name was registered in live casual labour register, he filed OA No.1792/1994 in which he prayed for his re-engagement as well as for his regularization and this Tribunal vide Order dated 20.9.1996 with the following directions:-

"3. It is admitted by the respondents that Sh. Maharaj Singh, son of Sh. Nandram was employed by them from 16.1.82 to 20.2.82 and again from August, 1985 to 15.11.86 and his name finds mentioned in the Live Casual Labour Register at serial No.28.

4. Both counsel agree that this O.A. may be disposed of with a direction to the respondents that subject to the identity of the applicant being verified and found to tally with Sh. Maharaj Singh, son of Sh. Nandram, and subject to availability of work the respondents should consider re-engaging the applicant strictly as per rules and in his turn in the order of seniority in the Live Casual Labour Register. We direct accordingly.

5. This O.A. stands disposed of accordingly. No costs."

2.1 After the aforesaid judgments, the applicant submitted several representations to the respondents, one of which was forwarded by AEN, Fatehgarh to DRM vide letter dated 4.12.2001. When no response received by the applicant, he again submitted representations on 10.9.2002, 14.3.2003 and thereafter he filed Application under RTI on 21.7.2011 which was replied by the respondents vide letter dated 30.8.2011 vide which a seniority list as well as a letter dated 18.11.2002 which shows that one Shri Ved Pal Singh, who was much junior to the applicant, had been given re-engaged after the decision of the OA 2191/19976 filed by said Shri Ved Pal Singh whose name at Serial No.88, which was decided on 19.11.1998. However, the applicant was not re-engaged. The applicant against submitted his representations on 24.9.2011 and 21.7.2011. When the same were not responded to by the respondents, the applicant sent a legal notice dated 24.9.2012 alleging discrimination and violation of Articles 14 and 16 of the Constitution of India. However, after waiting for three months, when the same was also not responded to by the respondents, the applicant has filed this OA for redressal of his grievances.

3. Pursuant to notice issued to the respondents they have filed their reply, in which they first of all raised the preliminary objection that the instant OA is hopelessly barred by limitation.

3.1 They further stated that the respondents are filling up the posts of MTS as per Sixth Pay Commission through Railway Recruitment Board/Railway Recruitment Commission, hence, no

cause of action arises in favour of the applicant and moreover, the applicant has verified in the OA that he is already 49 years of age.

3.2 They also stated that as per Railway Board's letter dated 11.5.1999, it was decided by the Railway Board that screening of casual labours borne on the live register/supplementary live register should be done on the basis of instructions in the letter dated 1.4.1999. Thus, the live registers were concluded and a committee consisting of three J.A. Grade Officer's i.e. of Sr. D.P.O., Sr. DEN (Cord) and Sr. DFM of Izatnagar Division scrutinized the records of the casual labour existing on the live Register of the Engineering Department and the casual labours who were found eligible as per norms laid down in the Railway Board's letter dated 11.5.1999 were re-engaged and rest who did not fulfill the requisite norms were rejected by the Committee. The applicant's name was listed in the live register of AEN Fatehgarh but the applicant was not found suitable as per norms laid down in the Board's letter dated 11.5.1999, as such he was debarred from re-engagement.

4. During the course of hearing, counsel for the applicant submitted that from the RTI reply it is admitted that applicant is senior to one Shri Ved Pal Singh as evident from the seniority list and further the said Ved Pal Singh was given engaged as casual labour by the respondents vide order dated 18.11.2002 but the applicant was not engaged despite the directions of this Tribunal in the earlier OA filed by him which amounts to discrimination and violation of Articles 14 and 16 of the Constitution of India.

5. Counsel for the respondents submitted that the instant OA is barred by limitation as the applicant stated that he had submitted several representations but the representations dated 14.5.2003 and 14.3.2003 have not been received by the respondents and further any information given under RTI does not extend the period of limitation as the applicant slept over his right since 1996, i.e., after the decision of this Tribunal and no sufficient ground have been adduced in the MA for condoning the delay. To buttress his arguments, learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in the case of ***Shri Arun Kumar Agarwal vs. Nagreeka Exports Pvt. Ltd. & Anr.***, 2002 (10) SCC 101; ***D.C.S. Negi vs. Union of India and others*** (SLP (Civil) No.7956/2011 decided on 7.3.2011; ***Rattan Chand Samanta vs. Union of India***, (1994) SCC (L&S) 182; ***S.S. Rathore vs. Union of India and others,*** AIR 1990 SC 10 etc.

6. Learned counsel for the applicant submitted that applicant has already moved a Misc. Application No.388/13 in which the applicant has explained the reasons for delay and the present OA is liable to be decided on merits.

7. After giving the thoughtful consideration to the submissions of learned counsel for the parties, the Court is unable to accept the contentions raised by the learned counsel for the applicant. No doubt the Central Administrative Tribunals Act, 1985, is a statutory act being enacted by the Parliament in order to adjudicate upon the service matters. Section 21 of the Administrative Tribunals Act, 1985 clearly provides 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 subsection (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."

8. The Apex Court as well as Hon'ble High Courts while dealing with this issue of limitation and also on the point of delay condonation passed various orders as enumerated below:-

(a) The Hon'ble Apex 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 OAs 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:

> "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. .....
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> 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)."

(b) The Apex Court in the case of ***S.S. Rathore v. State of Madhya Pradesh***, (1989) 4 SCC 582. In the said case, the Hon'ble Supreme Court has held thus:-

> "We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when 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. We, however, make it clear that 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. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.
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> It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was-filed or representation was made, the right to sue shall first accrue."

(c) Recently in ***Chennai Metropolitan Water Supply and Sewerage Board & Ors.*** Vs. ***T.T. Murali Babu***, (2014) 4 SCC 108, the Apex Court has been ruled thus:

> "Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the *lis* at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects

> inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the *lis*".

(d) "***In A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and others***, (2007) 2 SCC 725 following the earlier judgment in **U. P. Jal Nigam's case**, it was opined as under:

> "40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

(e) In the case of ***State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others,*** 2013(6) SLR 629, Hon'ble the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Relevant paragraphs from the aforesaid judgment are extracted below:

"13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In C. Jacob v. Director of Geology and Mining and another[1], a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -

"Every 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."

14. In Union of India and others v. M.K. Sarkar[2], this Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" 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 for reviving the "dead" 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 court's direction. Neither a court's 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.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.

> The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another[3], the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.
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> 16. In State of Orissa v. Pyarimohan Samantaray[4] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik[5].
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> 17. In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others[6], a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana[7] and proceeded to observe that as the respondents therein 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.
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> 18. In State of T.N. v. Seshachalam[8], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -
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> > "....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

9. In the light of the above said legal position of the various High Courts and Apex Court and having regard to the provisions of the Act *ibid*, it is clear that in order to get the benefit of limitation, the application has to satisfy this Tribunal that he was diligently pursuing his matter and was prevented by sufficient cause for not filing the OA within the period of limitation. Admittedly, the applicant's earlier OA 1792/1994 was decided by this Tribunal

vide Order dated 30.9.1996 with the observations as quoted above. Thereafter, in the year 1999, the Railway Board itself decided to screen all the casual labourers borne on the live register/supplementary live register to re-engage them. The applicant was also considered and it was decided not to re-engage him as he did not fulfill the requisite norms. Hence, the cause of action first arose to the applicant in the year 1999 when the Committee, which was constituted by the Railway Board, did not find the applicant possessing the requisite norms as laid down in Railway Board's circular dated 11.5.1999 and because of which he was debarred for re-engagement. Therefore, when the cause of action arose to the applicant in 1999 and no valid reasons have been shown for not taking up his cause of action in time, except to say that the applicant kept on waiting for the respondents to re-engage him for years together, this is an issue which is fully covered by various Orders of the Hon'ble Supreme Court, as stated above. As the applicant was neither vigilant nor agitated against the order of the respondents holding him ineligible for reengagement after the screening carried out in 1999, as such there is no ground to exercise discretion in his favour.

10. In view of the above, and for the foregoing reasons, this Tribunal finds that the applicant has miserably failed to demonstrate sufficient cause for not filing the OA within the period of limitation and further there is no prima facie case in favour of the applicant for condoning the delay in filing the OA. Accordingly, the Delay Condonation Application is devoid of merit and the same

is accordingly dismissed. Accordingly, the OA is also dismissed as barred by limitation. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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