CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.2835 of 2014
M.A. No.2458 of 2014

This the 23rd day of October, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Mr. Arun Kumar Paswan, Aged 35 years
S/o Sh. Sidheshwar Paswan,
R/o RZ-18E/2, Gal No.2,
Main Sagar Pur, New Delhi-46.

....Applicant

(By Advocate : Shri Raj Kumar Bhartiya)

VERSUS

1. Delhi Subordinate Services Selection Board,
FC-181, Institutional Area, Karkardooma, Delhi.
Through its Secretary

2. The Govt. of NCT of Delhi,
Through its Chief Secretary,
Delhi Secretary, Players Building,
I.P. Estate, New Delhi.

.....Respondents

(By Advocate : Shri Vijay Pandita)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

2. The applicant has filed this OA, seeking the following reliefs:

> "I To consider the applicant in S.C. category for post of driver as per the judgment passed in case of Ms. Babita Kumar Vs. DSSSB & Ors by Hon'ble Justices Mr. Pradeep Nandrajog & Ms. Pratibha Rani of Hon'ble High Court of Delhi in WE (C) 79977/2012.

II To appoint the applicant on permanent post of driver in post code 65/09 on the basis of examination and skill test and giving benefit of reservation in S.C. category for the said post.

III To pay the cost of the proceeding and by way of award in favour of applicant,

IV Any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may also be passed in favour of the applicant."

3. The grievance of the applicant is that he being appeared in the written examination and secured 50/100 marks as an SC candidate, which was conducted pursuant to advertisement issued by the respondents for filling up the posts of Driver in the year 2009, and qualified in the driving skill test for the post in question, the respondents have arbitrarily and illegally rejected his candidate on the ground that benefit of reservation, as available to SC candidates (Migrant in view of orders of Hon'ble Supreme court of India dated 4.8.2009 in Civil Appeal No.5092 of 2009 Shri Subhash Chandra & anr. v/s DSSSB and others.

3.1 The applicant has also filed MA 2458/2014 seeking condonation of delay in filing the instant OA on the ground that the aforesaid illegal and arbitrary action came to his knowledge only after receipt of information dated 14.9.2012 and applicant being a poor person approached to Delhi Legal Service Authority at Patiala House Court in the month of July 2014 to provide the services of a legal aid counsel to file his case. On his application, a legal aid counsel has been

provided by the Legal Aid Authority, who after considering all the facts and seeking the required papers has prepared this case. Thus, there is a delay of about 11 months in filing the OA which is not intentional but due to the reasons as stated above and therefore requested that aforesaid delay may be condoned.

4. The respondents have filed their reply to the OA as well as the said Delay Condonation Application. In the reply to the delay condonation application, respondents have stated that the written examination for the post in question was conducted on 14.3.2010 and 21.3.2010 and the result of the said examination was declared on 25.5.2010. Applicant obtained 50/100 marks and was declared shortlisted under SC category for appearing in skill test as the last short listed UR candidate marks were 58/100. Applicant appeared in driving skill test and was declared as pass. However, during scrutiny of his dossier at the time of finalization of result, it has been came to the notice that the candidate has possess the SC certificate, which was issued to him on the basis of his father's caste certificate. The OA has been filed on 13.8.2014 along with a application for condoning the delay of alleged 11 months only whereas after the declaration of the results, the period of limitation will start.

4.1 In support of their contention, the respondents have placed reliance on the judgments of the Hon'ble Supreme

Court in the cases of ***Union of India vs. M.K. Sarkar***, (2010) 2 SCC 59, and ***D.C.S. Negi vs. Union of India and others***. In the reply to the OA besides raising the objection of limitation, they have further stated that with regard to extending the benefit of reservation to various categories, the Board follows the instructions of the Govt. of NCT of Delhi and orders/judgment's of Hon'ble Courts.

6. It is settled law that before dealing with the matter on merit, it is necessary to deal with preliminary objection of limitation first if there is delay in filing the OA. Although the applicant has filed Misc. Application seeking condonation of delay of 11 months on the grounds as stated above. It is an admitted fact that the result was declared in 2010 itself. However, the applicant's contention that he came to know about the same only when he received the reply to his RTI Application vide letter dated 14.9.2012, which he has impugned in this OA and contents that applicant being a poor person and approached Delhi Legal Service Authority at Patiala House Court in the month of July 2014 and thereafter he was granted the legal aid by the said Authority and hence he had approached this Tribunal in 2014.

7. Section 21 of the Administrative Tribunals Act, 1985 clearly provides as under:-

> "21. Limitation –
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> (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 Hon'ble Apex Court as well as of the High Courts and having regard to the provisions of the Act *ibid*, it is clear that in order to get the benefit of limitation, the applicant 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. However, it is settled legal position that the law of limitation in this case starts from the date when the result was

declared, i.e., in 2010 and during the period from 2010 to 31.8.2012, what the applicant was doing is not stated in the OA as well as in the MA. Applicant simply stated that after receipt of the reply under RTI application on 14.9.2012, he approached the Delhi Legal Service Authority and that too in July 2014 and likewise the applicant has not stated what he was doing during the period from 14.9.2012 to July, 2014. As such there is delay of more than 11 months in this case and the explanation given in the MA for seeking the condonation of delay is not sufficient and justifiable to condone the delay. It is pertinent to note here that in this case applicant is seeking appointment and his candidature was rejected in the year 2010 by placing reliance on the judgment of the Hon'ble Apex Court which was prevailing at that time *ibid* and the applicant ought to have taken requisite steps immediately to get redressal of his grievance, as the applicant is seeking appointment which was finalized in 2010 and the instant OA was filed in 2014 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.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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