

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00889/2015

Monday, this the 5th day of November, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Ambuja.S.B.,
D/o.M.Sadanandan,
Haviss, Mundakkal,
Murukkumpuzha Desam,
Veliyur Village, Kollam.

...Applicant

(By Advocate – Mr.A.G.Sunil Kumar)

v e r s u s

1. Union of India represented by the
Secretary to Ministry of Communication & IT (India),
Department of Post, Dak Bhawan,
Sansad Marg, New Delhi – 110 001.
2. The Senior Superintendent of Post Offices,
Office of the Senior Superintendent of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram – 695 001.
3. Remadevi.D.,
GDS BMP, Karimanal BO.

...Respondents

**(By Advocates – Mr.N.Anil Kumar,SCGSC [R1-2]
& Mr.Vishnu S Chempazhanthiyil [R3])**

This application having been heard on 31st October 2018, the Tribunal
on 5th November 2018 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/889/2015 is filed by Smt.Ambuja.S.B., against the denial
of her claim to be posted as a GDS at Karimanal BO notified as per
Annexure A-1. The applicant had applied in proper format for the post

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which was specially reserved for Scheduled Caste/Scheduled Tribe candidates. She was one of the 46 candidates who had applied for the said post. Subsequently through an RTI application filed by one Shri.Rajeshkaran Nair.M., information was disclosed by the 2nd respondent that the 3rd respondent who belongs to unreserved category had been appointed to that post (Annexure A-3). Further information relating to the appointment as obtained under the RTI is also given at Annexure A-4. Again as per Annexure A-5, information was disclosed that one Smt.Remadevi.D., GDS MP, Kulathur has been posted as GDS BPM, Karimanal on medical grounds thereby nullifying the chances of the applicant.

2. The respondents have filed a reply statement. The first objection raised by the respondents is that there has been an inordinate delay of 657 days on the part of the applicant in approaching this Tribunal and for this reason alone the O.A is liable to be dismissed. In so far as the facts of the case are concerned, it is admitted that the post of GDS BPM, Karimanal, Thiruvananthapuram North Division had become vacant with effect from 26.10.2009 and a notification at Annexure A-1 was issued on 9.1.2012 by the 2nd respondent. It is also admitted that the post was reserved for Scheduled Caste community. Subsequently the competent authority decided to accede to the request of the 3rd respondent who was working as GDS MP at Kulathur to transfer her to Karimanal on medical grounds supported by a medical certificate. Thus as the post at Karimanal came to be filled up, the notification for filling up the same was cancelled through issuance of Annexure A-6.

3. It is maintained that reservation to Scheduled Caste category in Postal Division is limited to 10% of the BPM post and no post is permanently marked for Scheduled Caste or any other category. The respondent department is obliged by law to maintain the percentage as an overall feature and not specifically to any particular post or posts.

4. Heard Shri.A.G.Sunil Kumar, learned counsel for the applicant, Shri.N.Anilkumar, learned SCGSC for Respondent Nos.1&2 and Shri.Vishnu.S.Chempazhanthiyil, learned counsel for Respondent No.3. The applicant has filed a delay condonation petition by way of M.A.No.180/1090/2015 wherein it is admitted that there has been a delay of 657 days in filing the O.A. In the said petition no satisfactory reason has been put forward while seeking condonation of delay.

5. The Hon'ble Apex Court in **Bhoop Singh v. Union of India & Ors.** reported in AIR 1992 SC 1414 held timely attempts to seek justice are the essence and delay in pursuing one's perceived claim would make the person ineligible for the benefit. The Hon'ble Apex Court vide paras 7 & 8 held as follows :

7. It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seek within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by lateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due

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weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to not classify him with the other dismissed constables who approached the Court earlier and got reinstatement. It was clear to the petitioner latest in 1978 when the second batch of petitions were filed that the petitioner also will have to file a petition for getting reinstatement. Even then he chose to wait till 1989, Dharampal's case also being decided in 1987. The argument of discrimination is, therefore, not available to the petitioner.

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 belief. 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. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe Dharampal in the manner suggested by the petitioner. [Article 14](#) or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner. We are further of the view that these circumstances also justify refusal of the relief claimed under [Article 136](#) of the Constitution.

6. Delay in filing O.A or claim raised after considerable period/ belated challenge is liable to be dismissed. The Hon'ble Apex Court in **Union of India & Ors. v. A.Durairaj reported in 2010 (14) SCC 389** held that :

13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers

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who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

7. On the subject of delay we conclude that there has been inordinate delay in filing the O.A which has not been satisfactorily explained whereby the case is hit by limitation under Section 21 of the Administrative Tribunals Act, 1985. Accordingly, the O.A is dismissed as time barred as well as for want of merit. No costs.

(Dated this the 5th day of November 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00889/2015

1. **Annexure A1** – True copy of the Notification No.BIC/Karimanal dated 9.1.2012.
 2. **Annexure A2** – True copy of the list of candidates.
 3. **Annexure A3** – True copy of the letter dated 1.6.2012.
 4. **Annexure A4** – True copy of the application.
 5. **Annexure A5** – True copy of the letter dated 26.3.2014.
 6. **Annexure A6** – True copy of the approval letter dated 15.5.2012.
 7. **Annexure A7** – True copy of the representation dated 30.3.2014.
 8. **Annexure R1(a)** – True copy of the request submitted by the 3rd respondent.
 9. **Annexure R1(a)(i)** – Translation of Annexure R1(a)
 10. **Annexure R1(b)** - True copy of the medical certificate produced by the third respondent.
 11. **Annexure R1(c)** - True copy of the letter No.19-10/2004-GDS dated 17.7.2006.
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