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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00399/2018

Thursday, this the 9th day of August, 2018

C O R A M :

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

Liksy Joseph,
D/o.Joseph.K.M.,
Kadukumackal House,
Kabanigiri P.O., Pulpally,
Wayanad – 673 579.

...Applicant

(By Advocate – Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India
represented by the Secretary to Government of India,
Ministry of Finance, Department of Revenue,
New Delhi – 110 001.
2. The Principal Chief Commissioner of Income Tax,
Kerala, C.R.Building, I.S.Press Road,
Kochi – 682 018.
3. The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi – 110 001.
4. Aarathi Sara Sunil,
D/o.Dr.Sunil K Mathai,
Kunjan Bawa Road, Chettichira,
Vyttila P.O., Kochi – 682 019.

...Respondents

**(By Advocates – Mr.N.Anilkumar,Sr.PCGC [R] [R1-3]
& Mr.Saji Issac [R4])**

This Original Application having been heard on 2nd August 2018, the
Tribunal on 9th August 2018 delivered the following :

ORDER

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

The same issue came up before this Tribunal in O.A.No.180/156/2017 filed by Ms.Arathi Sarah Sunil, wherein the applicant herein is the 5th respondent and O.A.No.180/608/2017 filed by Mr.Alwyn Francis. The applicants therein were also aspirants for the post of Inspectors of Income Tax against Sports Quota in the Income Tax Department, Kerala. Applications had been invited for the two posts of Inspectors of Income Tax as well as for certain other categories and screening and selection was conducted from among the applicants. A rank list consisting of five names under different sports discipline were drawn up in which Ms.Arathi Sarah Sunil and Mr.Alwyn Francis, the applicants in the 2 O.As respectively were placed in 5th and 3rd position respectively. The first two candidates did not join when called up to do so and Mr.Alwyn Francis and Ms.Liksy Joseph (applicant in the present O.A) were not selected as they had not produced NOC from their employer. This Tribunal disposed of the O.As by order dated 5.4.2018 with the following directions :

2. It appears that along the line of consideration the others who were in the fray had withdrawn or had obtained other employment and therefore in the case of Arathi Sarah Sunil we hold that she is eligible for employment and in the case of Alwin Francis we hold that the Department have the right to examine the deficiency of not having produced an NOC and if they wanted to make any relaxation regarding it, even if he produces subsequently that also will be considered. Therefore, there will be an order to the respondents to give immediate employment/appointment to these two applicants.

3. The Original Applications are disposed of in the above terms. No order as to costs.

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2. The brief facts of this O.A are as follows : the applicant is a candidate for the post of Inspector of Income Tax against Sports Quota who figures at No.4 in the rank list referred to in O.A.Nos.180/156/2017 & 180/608/2017. The applicant's candidature had been rejected by Annexure A-3 for the reason that NOC of the applicant's present employer had not been submitted along with the application. However, since this Tribunal by way of Annexure A-4 order in O.A.Nos.180/156/2017 & 180/608/2017 had directed consideration of relaxation, the applicant identically situated claims the same benefit.

3. A reply statement has been filed by Respondent Nos.1-3 wherein it is maintained that the rank list had been in the following order :

a.	Shri.Sajan Prakash	Swimming (M)
b.	Ms.P.C.Thulasi	Badminton (W)
c.	Shri.Alwyn Francis	Badminton (M)
d.	Ms.Liksy Joseph	Athletics (W)
e.	Ms.Arathi Sara Sunil	Badminton (W)

4. Initially appointment orders had been issued to the first two candidates who declined to join. The candidature of Shri.Alwyn Francis, 3rd rank holder, had been cancelled as he had failed to disclose the fact that he was employed in Government which had been a pre-condition while submitting the application. He has also not submitted a NOC from the

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present employer as required. The candidature of Ms.Liksy Joseph, 4th rank holder and the applicant in this O.A., had also been rejected vide O.M dated 29.6.2017 due to her failure in submitting NOC from her employer along with the application form. The filing of the present O.A on 8.5.2018 after almost one year is alleged to be an after thought borne out of the consolidated orders issued by this Tribunal dated 5.4.2018 in O.A.Nos.180/156/2017 & 180/608/2017.

5. A counsel statement has also been filed on behalf of the 4th respondent, Ms.Aarathi Sara Sunil, wherein apart from describing various accolades that she has won, it is submitted that the applicant in the O.A had been impleaded as additional respondent No.5 in O.A.No.180/156/2017 but had chosen not to appear before this Tribunal. Thus it is maintained that having chosen not to appear in the said O.A, she is now estopped from staking a claim in the present O.A to the prejudice of the 4th respondent. Besides the issue having been settled in the earlier O.A cannot be re-opened through another proceedings on the same cause of action. The applicant had failed to provide NOC as required by Annexure A-1 notification and has none to blame other than herself for the deficiency.

6. We have considered the arguments put forward by Shri.T.C.Govindaswamy, learned counsel for the applicant, Shri.N.Anilkumar, learned Sr.PCGC for the Respondent Nos.1-3 and

Shri.Saji Issac K.J for Respondent No.4. As has been mentioned already the order of this Tribunal in O.A.Nos.180/156/2017 & 180/608/2017 was to the effect that Ms.Arathi Sara Sunil, 4th respondent herein, is eligible for appointment as the candidate placed high in the rank list and who has fulfilled all conditions mentioned in the said notification. It was also ordered that in the case of Shri.Alwyn Francis, who is rank No.3 and who has not been made a party in this case, the respondents may consider granting a waiver for having not produced a NOC along with his application. In compliance with the said directions in letter and spirit, the respondents have already filled up two posts available by accommodating Ms.Arathi Sara Sunil and Mr.Alwyn Francis. The applicant in this O.A, Ms.Liksy Joseph had been impleaded as a party vide proceeding dated 14.9.2017 in M.A.No.180/898/2017 in O.A.No.180/156/2017. Accordingly notice under Form No.8 was issued to Ms.Liksy Joseph by speed post on 21.9.2017. The applicant received the same on 23.9.2017 but neither appeared before this Tribunal nor filed a reply statement.

7. 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 :

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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 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.

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8. 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 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.

9. It is admitted that the applicant was at No.4 in the rank list for selection. She had been impleaded as a party in the earlier O.A.No.180/156/2017 but had not responded to the notice issued. This Tribunal had decided the O.A along with O.A.No.180/608/2017 by directing the respondents to consider the cases of the two candidates, one of which was the applicant, who had not submitted NOC from the present employer as required in the conditions put out in the notification. She had also been aware of the rejection of her case as O.M intimating the same was issued on 29.6.2017. But she waited for more than a year before approaching this Tribunal. One who is so negligent in pursuing one's own interest cannot claim benefits that had accrued to more prompt rivals.

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10. On the facts available as well as the pleadings made by learned counsel appearing for the parties, we are of the view that the O.A is devoid of merit and is liable to be dismissed. We proceed to do so. No costs.

(Dated this the 9th day of August 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00399/2018

- 1. Annexure A1** - True copy of the notification for the year 2016-17, issued by the 2nd respondent
 - 2. Annexure A2** - True copy of letter No.13/Estt.1/SQ/CC-CHN/2017-18 dated 12.6.2017 the 2nd respondent informed the applicant about the selection
 - 3. Annexure A3** - True copy of the Office Memorandum bearing F.No.13/Estt.1/SQ/CC-CHN/2017-18 dated 29.6.2017, issued from the office of the 3rd respondent rejecting the applicant's candidature
 - 4. Annexure A4** - True copy of the order dated 5.4.2018, in O.A No.180/00156/2017 of this Hon'ble Tribunal
 - 5. Annexure A5** - True copy of representation dated 30.4.2018 submitted by the father of the applicant before the 2nd respondent
 - 6. Annexure A6** - True copy of letter No.MDSA/ATH/2016-17 dated 1.9.2016, issued by the Divisional Sports Officer, Mumbai Division Sports Association, Central Railway
 - 7. Annexure A7** - True copy of Letter No.MDSA/ATH/2016-17 dated 1.9.2016, issued by the Divisional Sports Officer, Mumbai Division Sports Association, Central Railway
 - 8. Annexure A8** - True copy of Letter No.MDSA/ATH/2016-17 dated 12.9.2016, issued by the Divisional Sports Officer, Mumbai Division Sports Association, Central Railway.
 - 9. Annexure A9** - True copy of Letter No.MDSA/ATH/2016-17 dated 17.8.2016, issued by the Divisional Sports Officer, Mumbai Division Sports Association, Central Railway
 - 10. Annexure A10** - True copy of Merit Certificate issued by Athletics Federation of India
 - 11. Annexure A11** - True copy of the representation dated 8.5.2018 submitted by the applicant before the 2nd respondent.
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