

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/01123/2016 Orders pronounced on :03.08.2018
M.A.No.060/00468 & 469/2017 (Orders reserved on: 09.07.2018)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Paras

S/o Subhash Chand,

R/o Azad Nagar, P.O.

Golagarh Tehsil and District Bhiwani,

(Group-D).

Applicant

By: **Mr. Ankur Sidhar, Advocate, for
Mr. Rajesh Khandelwal, Advocate.**

Versus

1. Union of India through its Secretary,

Ministry of Communication & Information Technology,

Department of Information and Technology,

New Delhi.

2. Chief Postmaster General,

Haryana Circle, Ambala.

3. Superintendent of Post Division, Bhiwani.

4. SDI (P), Second Sub Division, Bhiwani Division, Bhiwani.

5. Parveen S/o Sh. Sanjay Kumar

R/o VPO Khorda District Bhiwani

presently working as GDS Budhera Branch Post Office.

Respondents

By: **Mr. Ram Lal Gupta, Advocate**, for Respondents No.1to4.
None for R.No.5.

(O.A.No. 060/01123/2016-
Paras Vs. VOI etc.)

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned order dated 30.4.2015 (Annexure A-1), vide which respondent no.5 has been selected and appointed as Gramin Das Sevak (GDS) MC/D Budhera BO in account with Loharu SO, and to offer appointment to the applicant in his place.
2. The facts of the case, as culled out from the pleadings of the parties, are that in pursuance of an open selection for the post of GDS/Mail Deliverer/Carrier for the Laharu Sub Office, Budhera Branch. P.O. in account with Loharu S.O., Bardu Chaina Branch P.O. in account with Lohari S.O. and Chang Sub Post Office in count with Bhiwani H.O. respectively on 19.7.2014, applications and result was declared on 29.8.2014. The applicant was amongst 5 meritorious candidates, having been placed at 4th position, whereas Respondent no.5 obtained 3rd position. As per information obtained under RTI Act, respondent no.5, was appointed as GDS MC/D Budhera BO in account with Loharu SO, vide impugned order. However, one Sh. Vikash, who was also selected and appointed had resigned from his job. The applicant submitted representation for his own appointment on 4.10.2016 followed by a legal notice dated 2.10.2016 to which a reply was given on 18.11.2016, not meeting the points raised by the applicant. It is claimed that one Vikas had resigned from his post on 28.2.2015 and as such applicant was legally entitled for appointment but respondent no.5 has been appointed though he had earlier resigned from the post of GDS MP Loharu on 8.5.2015, accepted on 18.5.2015. Thus, he was appointed prior to acceptance of his resignation which his illegal. One Vikash, the

most meritorious candidate had resigned, the post should have been offered to him instead of appointing respondent no.5 or it should have been re-advertised. Respondent No.5 was selected for the post of GDS Bardu Chaina and GDS Loharu, but he refused to join and ultimately, he has been appointed on 30.4.2015, which is illegal. He claims that manner of selection and appointment of respondent no.5 is doubtful and applicant is required to be given appointment against the selection in question, hence the O.A.

3. The official respondents have filed a reply. They have submitted that in the selection process for GDS MC/MD Budhera, the position of candidates was as under :-

Sr.No.	Name of candidates	%age of marks	Remarks
1.	Jitesh	81.80	Refused
2.	Vikash	81.37	Resigned
3.	Praveen	78.40	Working
4.	Paras	76.40	
5.	Manisha	73.80	

Similarly, the position with regard to GDS MP Loharu was as under:

Sr.No.	Name of candidates	%age of marks
1.	Vikash	81.37
2.	Parveen	78.40
3.	Ravinder	78.20
4.	Manisha	73.80
5.	Vinod Kumar	62.80

It is explained that candidate at Sr. No.1 submitted his refusal on 18.9.2014 and then candidate at Sr. No. 2 Vikash was appointed on 31.12.2014. He too submitted his resignation on 28.2.2015, which was accepted on 30.4.2015. The third candidate Praveen was addressed on 30.4.2015 who expressed his willingness to work on the post, though he was already working as GDS Laharu Post Office. His resignation dated

8.5.2015 was accepted on 18.5.2015 and then he joined the post. The turn of applicant could come only if respondent no.5 had refused the offer of appointment. Thus, the applicant being lower in merit cannot be given appointment and as such O.A. merits dismissal.

4. The applicant had filed an M. A. No. 060/01542/2016 seeking condonation of delay of only 25 days in filing the O.A. It was dismissed as withdrawn on 17.2.2017 with a prayer to file it afresh. The applicant filed M.A. No. 060/00468/2017 for placing on record amended M.A. showing delay of 228 days in filing the O.A. M.A. is allowed and the amended M.A. No. 060/00469/2017 seeking condonation of delay of 228 days in filing the O.A. is taken on record. After mentioning of sequence of events from 19.7.2014 to resignation of candidate, the only ground taken in the M.A. is that applicant visited official respondents from time to time and lastly he submitted representation followed by legal notice dated 25.10.2016, which was received by counsel on 8.12.2016, and for collection of documents and arrangement of fee in hard days of demonetization, and that there were two marriages in the family, so delay has taken place, which may be condoned as it is not intentional or deliberate. It is resisted by the respondents by filing a reply pleading that there is no merit in the plea of the applicant.

5. We have heard the learned counsel for the parties at length and examined the pleadings on the file.

6. The learned counsel for the applicant vehemently argued that the applicant has been making fervent efforts by visiting the office of respondents from time to time and as such delay caused in filing the O.A. is not intentional and it may be condoned and O.A. be decided on merits. Secondly, he submitted that since respondent no.5 submitted his resignation on 8.5.2015 which was accepted on 18.5.2015 and he

joined his duties on that date itself, as such his appointment stands vitiated as he could not work on two posts at the same time. On the other hand, respondent's counsel would submit that the applicant has caused huge delay in filing the O.A. and as such the O.A. may be dismissed on this short ground alone.

7. We have considered the submissions made by counsel present for the parties.

8. It is not in dispute that the impugned order is dated 30.4.2015 and the O.A. has been filed on 14.12.2016 and there is huge delay of 228 days in filing the O.A. The applicant has not been able to give any justification for condonation of delay. The plea that there was demonetization or marriage in the family or that the applicant kept on visiting the respondents is no ground, much less, cogent one, to condone the delay in filing the O.A. Repeated visits or service of a legal notice and invitation of reply to the same, would not revive cause of action in favour of the applicant.

9. It is more than clear that the applicant has filed a very vague application. It is a general application, lacking any specific particulars or grounds, much less supported with cogent reasons and cannot be allowed, at all, and deserves to be dismissed out rightly, in view of the ratio of law laid down in a number of cases, some of which are discussed hereunder.

10. A similar question came to be decided by a three Judges Bench of Hon'ble Apex Court in the case of **BHOOP SINGH V. UNION OF INDIA ETC.**, (1992) 3 SCC 136, wherein it was ruled as under:-

"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."

11. Likewise, in the case of **UNION OF INDIA & OTHERS VS. M.K.SARKAR** 2009 AIR (SCW) 761, it was ruled that limitation has to be counted from the date of original cause of action and belated claims should not be entertained. It was held as under:-

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115 "The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15. 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.

16. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

12. Again in the case of **D.C.S. NEGI VS. U.O.I. & OTHERs**, SLP (Civil) No. 7956 of 2011 CC No. 3709/2011 decided on 11.3.2011, it has been held as under:

"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)."

13. Also, in the case of **BHARAT SANCHAR NIGAM LIMITED VS. GHANSHYAM DASS ETC.** (2011) 4 SCC 374, a three Judge Bench reiterated the principle laid down in the case of **JAGDISH LAL VS.**

STATE OF HARYANA (1977) 6 SCC 538, that time barred claim should not be entertained by the Tribunal.

14. Therefore, it is held that since the applicant has miserably failed to plead and prove the ground, much less sufficient and cogent to condone the inordinate delay, and as such M.A. lacks any merit and has to be dismissed.

15. In any case, even on merits, also the applicant has no case at all, as the pleadings do indicate that applicant was below in merit than the appointed candidate (Respondent No.5). He cannot have any better right against the private respondent. On the one hand, he claims that either he should be offered appointment or the selection should be quashed. He cannot be allowed to approbate and reprobate in the same breath. It is a self destructive statement or plea raised by the applicant. The plea that respondent no.5 was appointed even prior to his resignation from earlier post is also factually wrong. He was working as GDS MP Loharu and submitted his resignation on 8.5.2015, in pursuance of his offer of appointment dated 30.4.2015, which was received by him on 6.5.2015. As is clear, that he was issued only offer of appointment, during his earlier employment, and then he submitted his resignation on 8.5.2015, which was accepted on 18.5.2015 and then, after completion of formalities, he was appointed to the post in question, on 18.5.2015. That being the position, even on merits, the O.A. lacks any substance as if one is already working against a post, he can resign earlier job and then join new assignment which can be done on single day, provided he does not draw salary on both posts. It is not in dispute that the applicant was lower in merit than the respondent no.5. Respondent No. 5 has every right to accept the offer of appointment given to him, being more meritorious in open selection. We do not find any grounds

made out by the applicant to interfere with the selection and appointment of respondent no.5, in the given peculiar facts and circumstances of the case.

16. In the conspectus of the aforesaid discussion, the M.A. and O.A. turn out to be bereft of any merit and are dismissed accordingly, leaving the parties to bear their own respective costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(P. GOPINATH)
MEMBER (A)**

Place: Chandigarh.
Dated: 03.08.2018

HC*

