

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

**MA No.060/01609/2017 IN
OA No.060/01249/2017 &
MA No.060/00293/2018**

Chandigarh, this the 27th day of July, 2018

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...

Amit Malik, aged about 38 years, son of Sh. Atam Parkash, House No.1633, Sector 22-B, Chandigarh, 160036, Group-B.

....APPLICANT

(Present: Mr. Rajan Bansal, Advocate)

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi 110003.
2. Comptroller and Auditor General of India, 9, Deen Dayal Upadhyaya Marg, New Delhi 110003.
3. Asstt. Comptroller & Auditor General, 9, Deen Dayal Upadhyaya Marg, New Delhi 110003.
4. Principal Accountant General (Audit), Sector 17-E, Chandigarh 160017, Punjab.
5. Deputy Accountant General (Admn.), Sector 17-E, Chandigarh 160017, Punjab.
6. Sr. Audit Office, Administration-II, Office of Principal A.G. (Audit), Sector 17-E, Chandigarh 160017, Punjab.

....RESPONDENTS

(Present: Mr. Barjesh Mittal, counsel for respondents no.2 to 6)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

The present Original Application (OA) has been filed by the applicant seeking the following relief:-

- "a) It is prayed that the applicant be also given one time relaxation for revision of the earlier exercised option for fixation of pay in the revised pay structure as he has been promoted as AAO after 01.01.2006 i.e. the applicant should be allowed to opt for re-fixation of pay in the revised pay structure in accordance with the circular no.1-staff wing/2015 no.-staff (Entt.-1) 100-2014 dated 06.01.2015 Annexure A-4.
- b) It is further prayed that a suitable order or direction be issued to the respondents to modify the office order no.O.O Admn/II/Pay Fixation/AAO/2015-16-90 dated 17.08.2015 bearing Endst. No.Admn-II/160(3)/Pay Fixation/AAO/2015-16/1224-30 Annexure A-6 to the effect that the name of the applicant be added in the list of the officers included therein whose pay has been refixed in pursuance of the circular no.1-staff wing/2015 No.-staff (Entt.-1) 100-2014 dated 06.01.2015 Annexure A-3.
- c) It is further prayed that a suitable order be issued thereby quashing the following impugned orders/letters bearing nos.
 - 1) Admn.II/Pay Fixation/AAO/2015-16/1515 dated 30.09.2015 Annexure A-8.
 - 2) Admn.II/Pay Fixation/AAO/2015-16/3159 dated 16.02.2016 Annexure A-10.
 - 3) Admn.II/Pay Fixation/AAO/2016-17/1190-1191 dated 03.10.2016 Annexure A-12 &
 - 4) Admn.II/Pay Fixation/AAO/2015-16/16-17/2685-86 dated 02.03.2017 Annexure A-14 passed by the respondent no.6 whereby requests made for re-fixation of the pay by the applicant through representations dated 04.09.2015 Annexure A-7, 15.01.2016 Annexure A-9, 01.07.2016 Annexure A-11 & 17.10.2016 Annexure A-13 (respectively) have been declined.
- d) It is further prayed that a suitable order or direction be issued to the answering respondents to allow the applicant to opt for revision of basic pay w.e.f. 30.03.2012 in the revised pay scale of AAO at par with the initial pay of the direct recruits.
- e) It is further prayed that a suitable order or direction be issued to the respondents to give all consequential benefits or arrears of service increment for which the applicant was deprived of w.e.f. 30.03.2012.
- f) It is further prayed that a suitable order or direction be issued as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- g) It is further prayed that the present application be allowed with costs."

2. Along with OA, the applicant has also moved an MA No.060/01609/2017 for condonation of delay of 240 days, in filing the present O.A.

3. This court, at the first instance, issued notice in MA for condonation of delay only to which the respondents have filed a reply.

4. We have heard learned counsels for the parties, on application for condonation of delay.

5. Mr. Rajan Bansal, learned counsel representing the applicant vehemently argued that it being a recurring cause of action, delay in filing the present OA be condoned.

6. Mr. Barjesh Mittal, learned counsel representing the respondents no.2 to 6 submitted that this is not a case of recurring cause of action, as the authorities have decided the representation of the applicant, which the applicant had submitted on 14.09.2015, vide impugned orders, clearly stating that persons, who were appointed in service prior to 01.01.2006, were given a chance to submit options, but since the applicant joined the respondent-department as Divisional Accountant, as a result of direct recruitment on 07.03.2008 i.e. after 01.01.2006 only, so he is not entitled to any benefit. He also submitted that after rejecting the first representation dated 30.09.2015 (Annexure A-8), the applicant could have come to this court for redressal of his grievances, at the first instance. But he submitted another representation dated 15.01.2016 (Annexure A-9), which was also rejected by the respondents, vide order dated 16.02.2016 (Annexure A-10). He further made representation dated 01.07.2016 (Annexure A-11), which was again rejected, vide order

dated 03.10.2016 (Annexure A-12) and he made another representation dated 17.10.2016 (Annexure A-13), which too has been rejected by the respondent-department, vide order dated 02.03.2017 (Annexure A-14), and thereafter the applicant approach this Tribunal by filing the present OA. Learned counsel for the respondents has submitted that claim of the applicant deserves to be dismissed being barred by law and on merits also. To buttress his plea, he placed reliance on ***Bhup Singh versus Union of India & Ors.*** (1992 A.I.R. S.C. Page 1414), ***Union of India & Ors. Versus M.K. Sarkar*** (2010(2) S.C.C. Page 58), ***S.S. Rathore vs State of Madhya Pradesh*** 1990(4) SCC 582, of ***C. Jacob vs. Director of Geology and Mining & Anr.*** 2009 (10) SCC 115 and ***Union of India & Ors. Versus A. Durairaj*** (J.T. 2011(3) S.C. Page 254).

7. We have given our thoughtful consideration to the entire matter and have perused averments made in the M.A. for condonation of delay.

8. We are not able to persuade ourselves to condone the delay in filing the OA, because applicant has not given any reasons much less cogent for not filing this O.A. at earlier point of time. Even this is not a case of recurring loss to the applicant as sought to be projected by him. Thus, in view of the settled law that fence sitters, who do not approach the Court in time cannot claim that such relief should have been extended to them, the applicant cannot be granted any benefit, in that regard.

9. Law prescribes certain bars for approaching a judicial forum; the most important of them is the bar of Limitation. Section 21

of the Administrative Tribunals Act, 1985, provides this bar. The delay and laches must be explained to the satisfaction of the Court for seeking condonation as held in the case of Bhup Singh (supra). Section 21 of the A.T. Act, came up for consideration before the Hon'ble Apex Court in the case of M.K. Sarkar (supra), wherein it has again been reiterated that limitation has to be counted from the date of original cause of action and decision on a belated representation would not revive the cause of action. It has been held as follows:-

"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. 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. Moreover, 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 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."

10. In case of **S.S. Rathore** (supra), Lordship has held that limitation will run/start from date of passing of an order and subsequent order will not extend the limitation. Even making of representations will also not extent the period of limitation. Section 21 of the A.T. Act came to be interpreted by their lordships in case of C. Jacob Mining (supra) In the case of A. Durairaj (supra), the Hon'ble Apex Court has observed as under:-

Re: Question (i)

12. Section 21 of the Administrative Tribunals Act, 1985 prescribes the limitation for approaching the Tribunal. In this case the medical examination of the Respondent and the non-promotion as ad hoc ASTE were in the year 1976. The Respondent accepted the diagnosis that he was colour blind and did not make any grievance in regard to his non-promotion. On the other hand, he attempted to get treatment or correction contact lenses from USA (to aid the colour blind to distinguish colours correctly). On account of the non challenge, the issue relating to his non-selection in 1976 attained finality and the same issue could not have been reopened in the year 1999-2000, on the ground that medical tests conducted in 1998 and 2000 showed him to be not colour blind.

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 of 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.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after

two decades and gets a direction of the Tribunal to consider and dispose of the same, and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action)."

11. Finding that the repeated representations do not extend the period of limitation and the fact that the applicant has failed to give any reason much less with cogent grounds, the MA is found to be bereft of any merit.

12. In view thereof, we see no reasons for condoning the delay in filing the OA, accordingly MA is dismissed. Resultantly, OA is also dismissed on the ground of limitation, delay and laches. Other connected MAs also stand disposed of. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 27.07.2018.

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