

CENTRAL ADMINISTRATIVE TRIBUNAL,
 CHANDIGARH BENCH
(CIRCUIT COURT: JAMMU)

M.A.NO.061/00603/2018
 IN
 O.A.NO.061/00466/2018

(Orders reserved on: 19.7.2018)
 Orders pronounced on: 01.08.2018

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

K.J. Razdan, age 64 years,

S/o Pt. S.N. Razdan,

R/o H. No. 119/3, Patoli Indira Bihar,

Jammu Tehsil and District Jammu.

Applicant

By: Mr. B.R. Manhas, Advocate.

Versus

1. Union of India through Secretary,
 Ministry of Information & Broadcasting, New Delhi.
2. Director General Doordarshan,
 Doordarshan Bhawan, Mandi House, New Delhi.
3. Director General,
 All India Radio, Copernicus Marg, Parliament Street,
 New Delhi.
4. Director All India Radio, Radio Kashmir, Head Zonal Station,
 Srinagar (Kashmir).
5. Director, Doordarshan Kendra, Srinagar.
6. Central Public Information Officer,
 O/o Director Doordarshan Kendra, Srinagar.

...

Respondents

By : None.

(O.A.No. 061/00466/2018
K. J. Razdans Vs. VOI etc.)

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, inter-alia, seeking issuance of a direction to the respondents to promote him to the post of Sr. Grade General Assistant / Senior Grade Copyist, w.e.f. 1982, with all the consequential benefits and to quash order dated 8.10.2014, vide which his claim has been rejected etc., basically on the ground that his claim for antedating the promotion as well as financial up-gradation under MACP is not tenable, as it is an old matter and impossible to verify the facts / pleas raised by the applicant and he cannot be extended benefit of decision dated 21.2.2011 passed by C.A.T. Mumbai Bench, which was passed in view of peculiar facts of that case only and was not to apply to entire cadre across the board.
2. Realizing that the claim raised by the applicant is barred by time, he has also moved a Miscellaneous Application for condonation of delay in filing the O.A, in which it is claimed that the respondents admit that the applicant was entitled for promotion as Senior Grade General Assistant w.e.f. 8.1.1982, in their letter dated 1.9.2012. He has been approaching the respondents repeatedly for grant of benefit but to no avail. It is only on 19.6.2017, that he was informed under RTI Act, that he was senior most copiest at that time and was eligible for promotion and his name was recommended for such promotion. He was also conveyed a communication dated 24.9.2014, vide which his claim had already been rejected. Thus, he claims that imnpugned order of 2014 was brought to his notice only in 2017 that too on filing of RTI applications. He claims that cause of action, if any, has to be counted from March/June, 2017 and as such delay, if any, in filing the O. A. may be condoned, more so when he has a good case on merit.

3. We have heard the learned counsel for the applicant at great length and examined the material on file.

4. Learned counsel argues that the applicant has a fundamental right of consideration for promotion and as such his claim cannot be rejected on the ground of limitation, in view of decision of Hon'ble Punjab and Haryana High Court in the case of **PARAMJIT KAUR & ANOTHER VS. STATE OF PUNJAB & ANOTHER**, C.W.P. No. 2301 of 2014, decided on 18.11.2014. It is argued that the authorities cannot be allowed to defeat such a claim by taking the plea of limitation. It is argued that general rule is that one is not entitled to relief is good one in appropriate cases and is a practice of the court but should not be used in a strict technical sense. He also relied upon decision of Central Administrative Tribunal, Ernakulam Bench, in O.A. No. 1105 of 2010 titled **G. SUNDARESAN PILLAI VS. UNION OF INDIA & OTHERS**, decided on 14.8.2012, in which right to consideration for promotion has been emphasized and claim filed by an employee in 2010, having retired on 31.12.2010, claiming promotion retrospectively w.e.f. 1.7.2010, was decided by the Tribunal on 14.8.2012, holding that his case could not be ignored by the respondents.

5. One cannot deny the view taken by the Courts in the aforementioned two cases, but the same would not come to the rescue of the applicant, from any angle, at all, in view of peculiar facts of this case, where the applicant is claiming promotion from 1982 onwards and O.A. is not only barred by law of limitation but delay & laches as well. In fact, one of the grounds to reject his claim is that old record is not traceable and it is too late in the day to raise such a claim, which cannot even be verified. Secondly, the applicant claims that he repeatedly urged the respondents for grant of relief but was denied.

Even if it is assumed that he repeatedly represented the respondents, but the fact is that such repeated representation, rejected in 2014, cannot extend the period of limitation. The applicant has not even mentioned as to number of delay for which O.A. is barred by law of limitation. It is a vague application, lacking any ground, much less supported with cogent reasons and cannot be accepted, at all and deserves to be dismissed out rightly with an observation that it is misuse of judicial process. Now we proceed to examine legal position on the issue.

6. An identical 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.”

7. 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."

8. 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)."

9. Again 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. Similar view has also been taken in the following decisions:-

- (a) AFLATOON & ORS. VS. LT. GOVERNOR, DELHI & OTHERS, AIR 1974 SC 2077
- (b) STATE OF MYSORE VS. V.K. KANGAN & OTHERS, AIR 1975 SC 2190
- (c) MUNICIPAL COUNCIL, AHMEDNAGAR & ANOTHER V. SHAH HYDER BEIG & OTHERS, AIR 2000 SC 671
- (d) INDER JIT GUPTA VS. UNION OF INDIA ETC. (2001) 6 SCC 637
- (e) SHIV DASS VS. UNION OF INDIA ETC., AIR 2007 SC 1330
- (f) REGIONAL MANAGER, A.P.SRTC VS. N. SATYANARAYANA & OTHERS, (2008) 1 SC 210 and
- (g) CITY AND INDUSTRIAL DEVELOPMENT CORPORATION VS. DOSU AARDESHIR BHIWANDIWALA & OTHERS, (2009) 1 SCC 168.

10. 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.

11. In the light of the aforesaid reasons, the application for condonation of delay is dismissed. Resultantly, the OA, shall also stand dismissed being barred by limitation. However, the parties are left to bear their own costs.

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

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

Place: Chandigarh.
Dated: 01.08.2018

HC*

