

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.NO.060/00471/2016 Orders pronounced on:04.10.2018
(Orders reserved on: 24.09.2018)

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

Sukhbir Singh, Aged 42 years, S/o Late Sh. Mam Chand, R/o House No. 3154-A, Sector 48-D, Chandigarh (Serving at Group-C Post)

Applicant

(By: **MR. S.K. BHARDWAJ, ADVOCATE**)

Versus

1. Union of India through Secretary to Govt. of India, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi-110001.
2. Chandigarh Administration through Secretary, Medical Education and Research, GMCH, Sector-32, Chandigarh.
3. Director Principal, Govt. Medical College & Hospital, Sector-32, Chandigarh.
4. Annam Ravi Kumar son of Sh. A.V. Aswada Narayana, posted as Medical Laboratory Technician Grade-I, Department of Transfusion Medicine, GMCH, Sector 32, Chandigarh.
5. Monika Sharma D/o Sh. H.P. Sharma, posted as Medical Laboratory, Technician Grade-I, Department of Microbiology, GMCH, Sector 32, Chandigarh.
6. James son of Sh. Guljar Masih, posted as Medical Laboratory Technician Grade-I, Department of Bio-Chemistry, GMCH, Sector 32, Chandigarh.
7. Deshmukh son of Sh. Jiwan Dass, posted as Medical Laboratory Technician Grade-I, Department of General Medicine, GMCH, Sector 32, Chandigarh.

(By : **MR. ARVIND MOUDGIL, ADVOCATE FOR R.NOS.2&3
MR. R.K. SHARMA, ADVOCATE FOR R.NOS.4TO7)**

Respondents

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

The applicant has invoked jurisdiction of this Tribunal under section 19 of the Administrative Tribunals Act, 1985, by filing this Original Application (OA) seeking quashing of the order dated 9.10.2014, whereby seniority list dated 5.4.2002 has been ordered to be restored and applicant has been treated as junior to private respondents and to set aside enquiry report dated 30.4.2015 and 14.11.2015 relating to introduction of new principles for determination of seniority and to treat him as senior most, over and above the private respondents in the relevant cadre of JLT.

2. The facts, giving rise to filing of this O.A. are that an advertisement was issued on 28.11.1998, against which applicant submitted his representation for the post of Junior Lab Technician (JLT) and after being successful, was appointed and joined his duties as such on 28.1.1999. He claims that he possessed the academic qualification and desired experience for the post in question. A provisional seniority list for JLT was issued on 13.9.2001 in which he was shown junior to certain ineligible candidates. He submitted a representation dated 5.10.2001, on the ground that candidates at Sr. No. 19 and 20 did not fulfill qualification / experience and as such they cannot be treated as senior to him. However, the seniority list was finalized on 5.4.2002 (Annexure A-2), maintaining the earlier seniority position. The applicant, after getting information under RTI Act, 2005, submitted a representation dated 25.10.2007 for change in seniority list. Ultimately, he submitted representation dated

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26.3.2008 for change in seniority. An alleged enquiry was conducted and report dated 1.8.2008 was presented indicating that named individuals by applicant did not fulfill requisite qualifications/experience. Enquiry was also made qua qualifications possessed by the applicant. Ultimately, a show cause notice was issued to the private respondents as to why they should not be placed below in seniority, as they did not have requisite qualifications etc. A fresh seniority list dated 15.10.2009 of JLT was issued in which applicant was placed above ineligible candidates.

3. Aggrieved thereby, the private respondents submitted representations for making a fresh enquiry as applicant did not have experience from a reputed Hospital / Institution, as per requirement of advertisement. The applicant submitted a representation on 7.12.2012, with documentary proof in support of his experience being from reputed organization. Enquiry was conducted and a report dated 30.7.2012 was submitted in which it was held that nobody including applicant is qualified for the post of JLT, by the closing date of advertisement. An appeal was filed which was decided on 25.1.2013. Order issued for finalization of provisional seniority list dated 31.10.2013. However, private respondents were given an opportunity to submit representations against the seniority list. Again a committee was constituted which submitted a report in April, 2014, upholding seniority list dated 5.4.2002, in which applicant was at Sr. No. 24, below the private respondents. The applicant submitted representation against the same. He was supplied enquiry report dated 30.4.2015, with regard to seniority list of JLT (now Laboratory

Technician Grade-I), which has reiterated seniority list of 2002, holding that applicant did not possessed 3 years experience as required by rules. The appeal filed by him has been rejected vide order dated 4.11.2015 (Annexure A-18). Hence, the O.A.

4. The respondents No.2 and 3 have filed reply. They submit that the requisite qualification for the post in question, inter-alia, was 10+2 vocational course in Medical Lab Technology (MLT) with one year apprenticeship and 03 years professional experience. The other facts, as pleaded by applicant, by and large are not disputed. It is submitted that considering contradictions in reports, another enquiry was conducted which gave it report on 4.11.2014, stating that applicant has done 10+2 vocational course in 1994 and DMLT in 1995-96. AS such, he did not do apprenticeship after +2 vocational course, which is a requirement for practicing as Lab Technician. However, he has produced documents from Haryana Government Authorities to consider his DMLT equal to apprenticeship, which can be allowed. However, applicant has simultaneously claimed professional experience for the same period when he was doing DMLT at Karnal. In support of this, he has enclosed as experience certificate from Dr. R.K. Bajaj from 1.8.1994 to 31.3.1996. His claim of having essential clarification and professional experience falls flat if his DMLT is considered equivalent to apprenticeship because, then he is short of three years experience after DMLT. Thus, he cannot derive double benefit. The private respondents have also filed a reply on similar lines.

5. We have heard the learned counsel for the parties and examined the material on file minutely.

6. Learned counsel for the applicant vehemently argued that when earlier enquiry reports have held the applicant to be eligible for the post and possessing requisite qualification and experience, then subsequent enquiry cannot upset that finding and private respondents being not eligible for the post at relevant point of time, cannot be placed over and above the applicant. On the other hand, learned counsel for the respondents argued that since there was contradictions in the reports earlier given on the issue, a fresh enquiry was conducted in which the applicant has been held to be ineligible and as such he cannot claim any seniority settled in 2002. They further argue that the O.A. is hugely barred by law of limitation.

7. We have given our thoughtful consideration to the entire matter and perused the material on the file.

8. The moot question that arises for consideration before us is as to whether the O.A. is barred by time and as to whether since fact finding enquiry in 2014, has held him also as ineligible for the post in question, can he still claim seniority, over and above private respondents?

9. It is not matter of dispute that the Seniority list was finalized in the year 2002. The applicant accepted the validity of the same and kept quiet for about 4 years and invited information under RTI Act in 2006. However, the respondents obliged him and started making correspondence on the issue and conducted enquiries on the issue. The matter should have been given quietus burial at that time itself, being barred by time. But the action of the respondents entertaining a belated claim gave rise to this litigation. In any case, the cause of action, if any,

arose to the applicant in 2002 itself, when he should have approached this Tribunal. But he failed to do so. The belated representation, even if it was entertained and replied to since 2008 to 2015, would not revive the cause of action that had extinguished for him in 2002 and such like claims cannot be entertained by a court of law.

10. 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."

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. Not only that, even on merits, the sole ground raised by the applicant is that he possessed the qualification and experience, whereas private respondents did not and as such he should be shown above them. As stated by respondents and is apparent from the inquiry report given in 2014, that did not have the requisite experience, rather he has tried to hoodwink the authorities by claiming experience / working in two institutions at the same time which is not permissible. The report clearly indicates that the applicant has produced documentary evidence from Haryana Government Authorities to treat DMLT as equal to apprenticeship, which can be allowed. Simultaneously, he claims professional experience for the same period when he was doing DMLT at Karnal and has also gained experience from Dr.R.K. Bajaj from 1.8.1994 to 31.3.1996. His claim of having essential clarification

and professional experience falls flat if his DMLT is considered equivalent to apprenticeship because, then he is short of three years experience after DMLT. Thus, admittedly, he himself was not even eligible for the post in question. Since we are not called upon to record any finding on his selection despite ineligibility, therefore, we are not examining the validity of his appointment. Thus, he has taken a self defeating plea for tinkering with the seniority settled in 2002 and his claim has rightly been rejected by the authorities as he himself has now been declared as ineligible for the relevant post.

14. In the wake of the aforesaid factual and legal scenario, we are of the firm view that this O.A. merits rejection and is dismissed accordingly. However, the parties are left to bear their own respective costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

Place: Chandigarh.
Dated: 04.10.2018

HC*