

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

**M.A. No.60/1723/2017
O.A. No.60/1021/2017**

Date of decision: 26.07.2018

...

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

...

Ved Prakash son of Sh. Hari Ram, age 49 R/o House No.587/19, Anandpura,
Near All India Radio, Rohtak. Group C.

... APPLICANT

VERSUS

1. Bharat Sanchar Nigam Limited, New Delhi through its Chairman-cum-Managing Director.
2. General Manager, Bharat Sanchar Nigam Limited, Circle Rohtak, District Rohtak.

... RESPONDENTS

PRESENT: Sh. Alankrit Bhardwaj, counsel for the applicant.
Sh. D.R. Sharma, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed by the applicant seeking following relief (s):-
 - "8 (a). To issue direction to the respondents to regularize the services of the applicant from 31.03.1998 instead of 01.10.2000, with all consequential benefits.
 - (b). To fix pay of the applicant notionally from 31.03.1998 i.e. from the date when applicant ought to have been regularized.
 - (c). The applicant may be granted the pay for the period from 13.06.2003 to 25.05.2004 during which the respondent department did not post the applicant for posting resulting into financial loss to the applicant."

2. Along with the O.A., applicant has also moved an application praying for condonation of delay of 3170 days in filing the O.A.
3. This Court at the first instance issued notice in M.A. for condonation of delay to which the respondents have filed reply.
4. We have heard learned counsel for the parties.
5. Learned counsel for the applicant submitted that in terms of judgment 01.04.2003 passed by the Hon'ble Supreme Court in Civil Appeal Nos.16685-16660 of 1996, service of the applicant has to be regularized w.e.f. 31.03.1998, instead of 01.10.2000. Since respondents have not granted benefit from that date, therefore, applicant is before this Court for rectification of their mistake by granting him benefit from the above date.
6. Respondents have contested claim of the applicant by submitting that this petition deserves to be dismissed on account of huge delay of 13 years. He submitted that in terms of order of Hon'ble Supreme Court, order dated 12.06.2003 (Annexure A-3) was passed, which was subsequently modified on 23.02.2004 (Annexure A-4) and services of the applicant has been regularized vide order dated 22.04.2004 (Annexure A-6) w.e.f. 01.10.2000. He submitted that these orders have not been challenged by the applicant and he is simply making a prayer for retrospective regularization, which cannot be accepted at this belated stage. He submitted that cause of action, if any, arose in favour of the applicant in the year 2004 when his services were regularized w.e.f. 01.10.2000. Since applicant did not approach Court of law at that point of time and no explanation has been given by him to condone huge delay of 13 years, therefore, he prayed that M.A. as

well O.A. be dismissed. 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 averment made in the M.A. for condonation of delay. We are unable to persuade ourselves to condone the huge delay of 13 years because applicant has not given any reasons much less with cogent grounds for not filing O.A. at earlier point of time when his services were regularized by the respondents. Even this is not a case of recurring loss to the applicant. Thus, in view of the settled law that fence sitters, who do not approach the Court in time cannot claim that such relief should be extended to them, the applicant cannot be granted any benefit.
8. 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."

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 extend 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). This Court had occasion to examine such situations in *Union of India v. M.K. Sarkar* (JT 2009 (15) SC 70: 2010(2) SCC 58) and 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. Xxxxx

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 reviewing 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 extended the limitation, or erase the delay and laches.

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."

9. In the light of the law on the issue and considering the specific facts of this case, we find no reason to condone huge delay of 13 year and M.A. for condonation of delay, is therefore, dismissed being devoid of merit and accordingly O.A. is also dismissed being barred by time. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 26.07.2018.
Place: Chandigarh.

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