

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/01024/2017

Orders pronounced on: 26.11.2018
(Orders reserved on: 02.11.2018)CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**Lakhwinder Singh s/o Late Sh. Gulzar Singh, H.No. 149, Village
Rasulpur Saidan, Opposite 16 Railway Crossing, Patiala, District Patiala.

Applicant

By: **MR. A.P. SINGH, ADVOCATE FOR
MR. GURNAM SINGH, ADVOCATE.**

Versus

1. Union of India through the Secretary, Department of Railway,
Rail Bhawan, New Delhi.
2. State of Punjab through the Secretary, Department of Industry,
Punjab Civil Secretariat, Chandigarh.
3. Diesel Loco Modernization Works (Earlier known as Diesel
Locomotive Works), Patiala, District Patiala, through its Chief
Administrative Officer (Railway).

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Respondents

By : **MR. G.S. SATHI, ADVOCATE.**

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, issuance of direction to the respondents to consider his claim for employment to class II or Class III post, depending upon his qualification, as per Welfare Policy framed by the respondents for displaced families to set up DCW, Patiala.

2. The facts leading to the filing of the instant Original Application (OA), that applicant is a Registered Dentist. His date of birth is 19.9.1983. He is son of Gulzar Singh, land lord whose land was acquired for setting up of the DCW (DLMW), Patiala, vide notification dated 18.5.1981 and compensation was allowed vide decision dated 4.9.1987. The respondents framed a policy dated 1.1.1983 for rehabilitation of evicted families on account of acquisition of their land for the indicated project including grant of appointment on compassionate grounds. The respondents invited applications for appointment on compassionate grounds and last date mentioned was 31.3.1998. The applicant was about 13 years of age at that time and was pursing his studies which were completed in 2011, when he was registered as Dentist by Punjab Dental Council, Chandigarh. He submitted a representation on 22.2.2012 for appointment in pursuance of the aforesaid policy. His claim was rejected vide order dated 6.9.2012 (Annexure P-6), on the ground that he had not applied for relevant appointment by 31.3.1998, the cutoff date. He claims that certain individuals were asked to produce their documents for such appointment in 2014, as such his claim could not be rejected on the ground of non submission of representation / application in 1998. One such appointment made in favour of Ram Singh is on 14.3.2014 (Annexure P-9). Mother of applicant submitted a representation on 18.3.2015 (Annexure P-10). This was also rejected vide order dated 30.3.2015 (Annexure P-11).

3. Aggrieved thereby, the applicant filed CWP No.19509 of 2015 in the Hon'ble High Court of Punjab and Haryana, which was transferred to this Tribunal, for lack of jurisdiction, vide order dated 27.7.2017, hence this O.A. registered as 060/01024/2017.

4. The respondents have filed a reply. They submit that as per para 2(2) of the Policy, only one job on preferential treatment is to be offered to one family. As per policy dated 1.1.1983, appointment is to be given to a member of the family (sole owner of land or son / daughter / husband / wife of the sole owner). Since the applicant did not submit application by cutoff date, so he is not entitled to any benefit. Moreover, he was under age as on 31.3.1998 and even otherwise could not apply for appointment. His claim has rightly been rejected. They have, thus, prayed for dismissal of the O.A. The applicants have not filed any rejoinder.

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

6. A perusal of the pleadings and documents available on record would show that the applications were invited by the respondents with cutoff date as 31.3.1998 and at that time applicant was minor. His father or mother did not submit any application for appointment of any one on compassionate grounds. It is only in 2012, that the applicant has submitted his application for such appointment and the sole ground raised by him is that since some appointments have been offered in 2014, so the applicant cannot be discriminated against, for non submission of any application and as such he is entitled to appointment under the relevant policy. The fact remains that no application was filed by family of the applicant in 1998 on or before the cutoff date. The process re-started in 2014 was related to applications submitted in 1998 and it is not for submission of any fresh applications. It does not provide a fresh cause of action to those who have missed the bus in 1998. The applicant was a minor at that time and could not even

otherwise submit an application for appointment on compassionate grounds.

7. The instant O.A is hugely barred by law of limitation, delay and laches. The issue regarding delay in invoking jurisdiction of a court of law was considered by Hon'ble the Supreme Court in **U. P. JAL NIGAM AND ANOTHER V. JASWANT SINGH AND ANOTHER** , (2006) 11 SCC 464. In that case, the judgment of the High Court was impugned before Hon'ble the Supreme Court, wherein while referring to earlier judgments of Hon'ble the Supreme Court in **RUP DIAMONDS V. UNION OF INDIA**, (1989) 2 SCC 356; **STATE OF KARNATAKA V. S. M. KOTRAYYA**, (1996) 6 SCC 267; **JAGDISH LAL V. STATE OF HARYANA**, (1997) 6 SCC 538 and **GOVERNMENT OF WEST BENGAL V. TARUN K. ROY**, (2004) 1 SCC 347, it was held that a person, who approaches the court at a belated stage, placing reliance upon an order passed in some other case earlier, can be denied the discretionary relief on account of delay and laches. Relevant paragraphs thereof are reproduced below:

"5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this court in Harwinder Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?

6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order.

Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

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16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others."

8. Not only that, admittedly in this case a cutoff date was fixed by the respondents and family of applicant did not submit any application by the date i.e. 31.3.1998, thus, the applicant cannot be allowed to claim that he is entitled to appointment by submitting an application in 2012. In any case the issue of fixation of cutoff date has been dealt with by the Hon'ble Apex Court in the case of **Transport and Dock Workers Union and ors. Vs Mumbai Port Trust & Anr.** 2010 (6)

SLR 691. It has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection. The choice of a cut-off date

cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical) even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut- off date leads to some blatantly capricious or outrageous result. It has been held in **ARAVALI GOLF CLUB VS. CHANDER HASS** 2008(1) SCC 683 and **GOVT. OF A.P. VS. P. LAXMI DEVI** 2008(4) SCC 720 that the court must maintain judicial restraint in matters relating to the legislative or executive domain.

9. Still further, the claim of the applicant has been rejected twice, firstly on 6.9.2012 (Annexure P-6) and secondly on 30.3.2015 (Annexure P-11). It is surprising that both these orders have not even been challenged by the applicant seeking quashing of the same. Once he accepts legality of both these orders, he cannot be granted any relief in the guise of issuance of writ of mandamus only.

10. In the wake of aforesaid discussion, this O.A is dismissed being barred by law of limitation, delay and laches, as well as on merit. The parties are, however, left to bear their own costs.

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

**(AJANTA DAYALAN)
MEMBER (A)**

Place: Chandigarh.
Dated: 26.11.2018

HC*