

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, NAGPUR**

O.A.2074/2015

Dated this Wednesday the 11th day of October, 2017

**Coram: Hon'ble Shri Arvind J.Rohee, Member (J) .
Hon'ble Shri R. Vijaykumar, Member (A) .**

Babankumar S/o Baliram Devikar,
CPWD Qtr. No.F/82,
Type-III, Civil Lines,
Nagpur-440010.
(By Advocate Shri S.D.Kahaley) .

...Applicant.

Versus

1. Union of India,
Through its Secretary,
Ministry of Finance,
North Block,
New Delhi-110001.

2. The Union of India,
Through its Secretary,
Ministry of Mines,
3rd Floor, 'A' Wing,
Shastri Bhawan,
New Delhi-110001.

3. The Controller General
of Accounts, Ministry
of Finance, 7th Floor,
Lok Nayak Bhawan,
Khan Market,
New Delhi-110003.

4. The Chief Controller of Accounts,
Ministry of Mines,
Room No.299 'C' Udyog Bhawan,
New Delhi-110001.

...Respondents

(By Advocate Shri R.G.Agrawal)

Reserved on : 20.09.2017

Pronounced on : 11.10.2017

ORDER

Per : Shri A.J. Rohee, Member (J)

The applicant who is presently working as Senior Accountant with the respondents has grievance regarding date of his promotion to the post of Accountant and hence approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

"8.1 That the impugned orders regarding cancellation of promotion of the Applicant issued by the respondent No.3 under his letter No.A.11020/1/2000-01/MF CGA (A)/949-50 dated 2606.2001 may kindly be quashed and set aside;

8.2 That the respondents be directed to grant promotion to the Applicant to the post of Accountant w.e.f. 09/01/2001 and to the post of Sr. Accountant from the date his next junior was promoted and pass on the consequential benefits arising there-from;

8.3 That the respondents be directed to pass on all consequential benefits of pay, seniority etc. after re-fixation of pay and seniority to the Applicant; and

8.4 Any other relief which this Honorable Tribunal may deem fit and proper in the interest of justice."

2. The facts of the case run in a small compass and hence the controversy involved is

limited. The applicant was initially appointed as Lower Division Clerk through Staff Selection Commission in Armed Forces Headquarters, New Delhi on 15.3.1990 vide Annexure-A-3. By a representation dt. 30.9.1992 (Annexure-A-4) he directly applied to respondent No.4 for his unilateral transfer in the subordinate office under respondents at Nagpur. His request was favourably considered and accordingly he was transferred to the Pay and Accounts Office, Geological Survey of India, Central Region, Nagpur, where he joined on 3.5.1993 vide transfer order Annexure-A-5.

3. The respondent No.3 issued the office order dt. 9.1.2001 thereby promoting the applicant to the post of Accountant. On this basis the office order dt. 23.2.2001 (Annexure-A-7) was issued by the R-4 and the applicant was posted in Pay and Accounts Office, Ministry of Home Affairs, New Delhi. However, the applicant submitted a representation for posting him at Nagpur Office on promotion post.

While his request was being considered, it was transpired that his very induction in Central Civil Accounts Service cadre was not proper, since R-3 and R-4 were not competent to transfer him from another department. Hence, by the impugned order dt. 26.6.2001 (Annexure-A-8) the promotion order dt. 23.2.2001 was withdrawn.

4. On reference made to R-2, approval is accorded to the induction of the applicant in Central Civil Accounts Service cadre with retrospective effect from the date he joined with the respondents on his unilateral transfer. This is vide office order dt. 13.7.2001 (Annexure-A-9).

5. Subsequently, the applicant was again considered for promotion to the post of Accountant and was accordingly promoted vide order dt. 7.2.2003 (Annexure-A-11) issued by R-4 in pursuance of the order dt. 18.11.2002 issued by R-3. The applicant joined at the new posting in New Delhi without any protest.

Subsequently, he was promoted to the post of Senior Accountant vide order dt. 15.5.2007 (Annexure-A-12).

6. The applicant was, however, aggrieved by the order of withdrawal of his initial promotion to the post of Accountant and hence he submitted series of representations to the respondents on 06.09.2002, 15.03.2004, 24.02.2005, 12.03.2008, 14.05.2009, 30.04.2010, 20.06.2011, 03.09.2012 followed by legal notice. However, it was informed that his application has been forwarded to R-2. He also took recourse to the provisions of R.T.I. for getting information regarding the steps taken by the respondents on his representations.

7. Thereafter, the applicant approached this Tribunal twice in the previous OAs No.2105/2013 and 2053/2014 challenging the impugned order of withdrawal of his promotion with a request to grant him promotion from the date it was initially granted to him. However, both the aforesaid OAs were withdrawn and hence

dismissed vide order dt. 20.1.2014 and 25.07.2014 (Annexure-A-2 collectively) on the ground that he wants to bring on record additional documents relevant to his case. Thereafter, the present OA is filed.

8. The relief sought are based on the following grounds, as mentioned in paragraph No.5 of the O.A. The same are reproduced here for ready reference:-

"(1) The Applicant was appointed through Staff Selection Commission in Armed Forces Head Quarters, New Delhi.

(2) That the Applicant came on unilateral transfer to CCAS cadre by an order of competent authority and confirmed as LDC, under orders of competent authority.

(3) That the absorption of the Applicant in CCAS cadre was ordered by the competent authority viz. The Secretary, Ministry of Mines and Controller General of Accounts.

(4) That the Applicant is entitled to promotion to the post of Accountant w.e.f. 09.01.2001 and to the post of Sr. Accountant w.e.f. the date, his next junior was promoted.

(5) That the Applicant has been requesting for anti-dating his promotion from 2002 onwards regularly.

(6) That the Applicant is subjected to great financial loss and also loss of seniority which has a lifetime cumulative effect on his furtherance in service till and after the date of

his superannuation".

9. On notice the respondents appeared and by a common reply dt. 7.1.2016 resisted the O.A. by denying all the adverse averments, contentions and grounds raised therein. It is stated that the O.A. is barred by limitation, since the applicant has challenged the impugned order dt. 26.6.2001 in this O.A. by which the promotion granted to him earlier was withdrawn, which was for valid and cogent reasons. The M.A. filed by the applicant for condonation of delay during the pendency of this O.A. is also refuted on the ground that no sufficient reasons are recorded therein. It is stated that simply because the applicant submitted repeated representations and approached this Tribunal twice on the previous occasions, it will not extend the period of limitation to approach this Tribunal as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

10. On merits also, the claim is denied

since the reasons recorded for withdrawal of the promotion are just, proper and legal since the applicant was transferred in the office of the respondents on his request and his induction was not proper since the respondent Nos.3 or 4 were not competent to consider his aforesaid request. Hence, subsequently the respondent No.2 on reference being made approved ex-post facto induction of the applicant in Central Civil Accounts Service cadre and thereafter he was considered for promotion and since found fit was promoted as Accountant. In such circumstances of the case, no grounds are made out for interference with the said order by exercising power of judicial review vested in this Tribunal. The O.A. is therefore, liable to be dismissed.

11. The applicant then filed rejoinder to the reply on 29.4.2016 and denied all the adverse averments made in the reply in support of the impugned order and reiterated the grounds stated in the O.A.

12. Again the respondents have filed reply to the rejoinder and denied the averments made therein.

13. On 20.9.2017, when the matter was called out during the circuit bench sitting at Nagpur, we have heard Shri S.D.Kahaley, learned Advocate for the applicant and the reply arguments of Shri R.G.Agrawal, learned Advocate for the respondents.

14. We have carefully gone through the entire pleadings of the parties including various documents relied upon by them in support of their rival contentions. However, although the guidelines were laid down by the Hon'ble Supreme Court in the matter of condonation of delay, it cannot be said that in the present case the delay is liable to be condoned.

15. We have also gone through the written notes of arguments submitted by the applicant and the copies of citations relied upon by him in support thereof.

FINDINGS

16. Before proceeding to consider the applicant's case on merit, it is necessary to consider M.A. for condonation of delay in approaching this Tribunal. Although according to the applicant there was no delay since he took recourse to the provisions of R.T.I. and was informed that his case was forwarded to R-2. However, no order came to be passed by the respondents on his representations. It is needless to say that cause of action to approach this Tribunal arose for the first time on 26.6.2001 when by the order issued by R-3 the promotion was granted to the applicant to the post of Accountant from LDC was withdrawn. As such, the period of limitation as prescribed under Section 21 will commence on that date. However, in the meantime, the applicant submitted his first representation on 6.9.2002 i.e. after more than one year from the date of issuance of the impugned order regarding withdrawal of his promotion. Thereafter, he

made successive representations. It is stated by the learned Advocate for the applicant that the respondents have not considered the representations and inaction on their part will not debar the applicant from approaching this Tribunal and hence delay, if any, is liable to be condoned.

17. However, in this respect it is obvious from record that although by the impugned order the promotion granted to the applicant was withdrawn it is also directed that a reference be made to the R-2 for regularization of induction of the applicant in CCAS cadre and on such induction he will be considered for promotion. This being so, it cannot be said that no steps were taken by the respondents in pursuance of the representation submitted by the applicant, although no order, as such, rejecting the representations was ever passed or communicated to him.

18. Further, it is the settled law that after accrual of the cause of action to

challenge any adverse order, the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985 will not be extended simply because successive representations are filed to revoke the adverse orders, unless sufficient, cogent and convincing reasons are given for condonation of delay. On the contrary, in view of the provisions of Section 19 of the Administrative Tribunals Act, 1985 when a representation is made against the impugned order, six months period is normally considered reasonable for the concerned authority to take a decision on it and if no decision is taken further period of one year will be available to the applicant to approach the appropriate forum for seeking redressal of his grievance. As such, in the present case the applicant should have approached this Tribunal within 1 ½ years from the date of his first representation i.e. 6.9.2002. He failed to do so and continued to file repeated representations, which only

revealed that his application was forwarded to the respondent No.2 for appropriate action. In the meantime, the applicant approached this Tribunal twice. However, this will not extend the period of limitation to approach this Tribunal. The applicant was very well in service and as such he should have approached this Tribunal earlier i.e. within 1½ years from the date of his first representation. From the above discussion it is observed that the grounds stated in the M.A. for condonation of delay are not at all sufficient, cogent or convincing to condone the delay and consider the O.A. on merit.

19. So far as this aspect of the case is concerned, the learned Advocate for the applicant has placed reliance on the decision rendered by Hon'ble Supreme Court in **Collector Land Acquisition, Anantnag & Anr. v. Mst.Katiji & Ors.** (1987 AIR 1353) decided on 19.2.1987 in which elaborate guidelines are laid down by the Hon'ble Supreme Court, while considering the

plea of limitation. Those guidelines are reproduced here for ready reference :-

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so".

20. The above guidelines are referred by the Hon'ble Bombay High Court in **Nilesh Vijay Deshmukh An Anr. v. Mathurbai Bhikanrao Deshmukh** (2005(6) BomCR 909) decided on

7.7.2005, in which the issue regarding limitation to approach the forum was involved. It is true that while considering the issue of limitation as far as possible liberal view should be taken. However, at the same time, it is also to be considered that there are no laches on the part of the claimant to approach the Tribunal. In the present case, the applicant although was in service, simply forwarded repeated representations without taking any recourse to legal proceedings and as such, it cannot be said that there are sufficient grounds to condone the delay of more than 13 years in approaching this Tribunal. Institution of the previous OAs will not extend the period of limitation, nor filing repeated representations as stated earlier since period of limitation starts the moment cause of action arose for ventilation of the grievance.

21. As stated and discussed above, we are of the considered view that the applicant was lethargic in approaching this Tribunal and was

satisfied simply by submitting repeated representations and thereafter taking recourse to the provisions of R.T.I. Act. In any case, it will not be appropriate to condone the delay on the grounds stated by the applicant.

22. In view of this M.A. for condonation of delay is liable to be rejected. The same is accordingly rejected.

23. Although the delay is not condoned, still this Tribunal is of the opinion that the claim can be considered even on merit. In this respect, it is obvious from record that the applicant was previously appointed in Armed Forces Head Quarters, New Delhi and he secured unilateral/request transfer to the office of R-4 at Nagpur. It appears that he has directly submitted a representation to R-4 who has accepted it. It is not known if the said request was submitted through the Head of Department of the applicant in Armed Forces Head Quarters, New Delhi. Perhaps for this reason by the impugned order it was held that

the very induction of the applicant in CCAS was inappropriate since he was inducted by R-4 who was not competent to do so. On the direction of R-3, R-4 then made a reference to R-2 to consider it and grant ex-post facto approval to the induction of the applicant in CCAS cadre. This was approved by R-2 and thereafter only the applicant was considered for promotion.

24. In such circumstances of the case, it cannot be said that there is any illegality or impropriety in the impugned order by which the promotion inadvertently granted to the applicant treating him as belonging to CCAS cadre from beginning is liable to be set aside. No prejudice can be said to be caused to the applicant since promotion was inadvertently granted to him and hence it was subsequently withdrawn, when he submitted a representation on receiving order for promotion to retain him at Nagpur.

25. Lastly we do not find any force in the contention of learned Advocate for the

applicant that since ex-post facto induction in CCAS cadre was approved, the promotion granted to applicant on earlier occasion should be restored. This is so because there was a clog or administrative difficulty to consider applicant as belonging to CCAS cadre in absence of approval of R-2 to it. Once such approval is granted the clog was removed and hence applicant became eligible for being considered once again for promotion, however prospectively only. He cannot be granted promotion with back date by restoring the previous order of his promotion. In any case, we do not find any merit in the present O.A.

26. For the above reasons, the O.A. stand dismissed on the ground of limitation, as well as on merit with no order as to costs.

(R.VIJAYKUMAR)
MEMBER (A)

(A.J.ROHEE)
MEMBER (J)

B.

