

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the **26th** day of **March 2019**

Present:

Hon'ble Rakesh Sagar Jain, Member (J)

Original Application No. 330/1534/2014
(U/S 19, Administrative Tribunals Act, 1985)

Bhim Singh, S/o Late Sri Ram Singh
R/o Village Ikwara, Post Hastinapur,
District Meerut.

.....Applicant.

By Advocates – Shri A. K. Pandey.

V E R S U S

1. Union of India through, Secretary General Manager, Head Quarter, North Railway, Baroda House, New Delhi.
2. General Manager, North Railway, Baroda House, New Delhi.

..... Respondents.

By Advocate : Shri Awadhesh Rai

O R D E R

Delivered by Hon'ble Mr. Rakesh Sagar Jain :

1. The president O.A. has been filed by applicant Bhim Singh under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:
 - i) *To consider the case of the applicant for compassionate appointment under Rules of Railway and decide the pending representation dated 07.11.2014 by reasoned and speaking order for granting compassionate appointment under the rules of Railway for which time bound direction is prayed.*
 - ii) *To pass any such/other order as deem fit in the facts and circumstances of the case.*

2. Brief facts of the case are that applicant Bhim Singh seeks appointment on compassionate basis in place of his father Ram Singh who died on 02.01.1997 in an incident in which six persons including his father were massacred. It is the further case of applicant that the then Railway Minister promised service to a member of the family of the deceased. In pursuance of the assurance of the Railway Minister, applicant applied for post of Class IV employee in the railway department on 17.01.1997 and sent repeated reminders for appointing him but the respondents have not taken action in the matter of his appointment. Hence the present O.A. to direct the respondents to appoint the applicant on compassionate basis and decide his representation dated 07.11.2014 for grant of appointment on compassionate basis.
3. In their counter affidavit, respondents have taken the plea that there is a delay of 16 years in filing the present O.A, as such, the O.A. is barred by period of limitation and the representations filed by the applicant cannot extend the period of limitation. In any case, the father of applicant was not a railway employee, as such, applicant cannot claim appointment on compassionate basis, as per, the scheme.
4. So, the dispute in the present is confined to two points: (1) Whether the O.A. is barred by period of limitation; (2) Relief, if any, applicant is entitled to?
5. On the question of delay in filing the O.A., learned counsel for applicant while submitting there is no delay in filing the O.A., argued that he had filed an application in respondent - department in 1997 for compassionate appointment in response to which the department sought documents vide letter dated 21.02.1997 (Annexure No. A4). Applicant sent the requisite documents to the department through registered post on 09.04.1997 by registered post. Thereafter he sent reminders in 1997, 1999 and 2000. The Additional Private Secretary,

Minister of Communication also directed the department to give appointment to applicant vide order dated 20.07.2000 (Annexure-A7). It is applicant's further case that he again sent reminders to respondent-department in 2001, 2003, 2005, 2006, 2008, 2009, 2010, 2012 and 2013 (Paragraph 4.8 of the O.A.). He again made representation on 16.06.2014 and 07.11.2014. It is also averred that, as per, information received under RTI Act, he was informed that no documents were received in the department from him in the year 1997 and that the receipt register from 8.4.1997 to 20.4.1997 has been weed out. Hence the present O.A. has been filed in the year 2014.

6. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.
7. Section 21 of the Administrative Tribunals Act, 1985, deals with the limitation. Section 21 reads as follows:-

"21. Limitation -

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in subsection (1), where –

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three

years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in subsection (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period".

8. On the question of delay, in Esha Bhattachargee Vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649, the Hon'ble Apex Court observed that : "The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."
9. In Chennai Metropolitan Water Supply and Sewarage Board and Others Vs. T.T. Murali Babu (2014) 4 SCC 108, it was held by the Hon'ble Apex Court as under:-

"13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others[AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd,

Abram Farewall, and John Kemp[(1874) 5 PC 221], which is as follows:-

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

10. It is settled law 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.
11. In the instant case, applicant seeks the relief compassionate appointment pertaining to the year 1997-98. Therefore, the cause of action occurred to the applicant in the year 1997-98 whereas the present *l/s* has been filed in the year 2014.

12. Applicant has not given any sufficient reason, let alone a plausible reason to explain the delay in filing the present O.A. from the year 1997-98. The approach of the applicant from the beginning has been lackadaisical and indolent which is responsible for the inordinate delay in approaching this Tribunal. Delay and laches, on part of the applicant to seek remedy is written large on the face of record. To repeat the observations of Hon'ble Apex Court - In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition.
13. The applicant has not adduced sufficient cause that prevented him from filing the Application within the prescribed period of limitation. In a recent decision in SLP (C) No.7956/2011 (CC No.3709/2011) in the matter of D.C.S. Negi vs. Union of India & Others, decided on 07.03.2011, by the Hon'ble apex Court it has been held as follows:- "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)".
14. In the light of the aforesaid observation of the Hon'ble Supreme Court, I am not satisfied that the applicant has sufficient cause for not making the original application within the period of limitation. Even, so, no application for condoning the delay in the filing of the O.A has been preferred by the applicant.

15. Even, the fact of making representations does not help the cause of applicant in taking the stand that his claim is not barred by period of limitation. The cause of action pertains to the year 1997-98 and since then the applicant has filed representation on numerous occasions. The filing of fresh representations does not extend the period of cause of action or period of limitation.
16. It is a settled principle of law that the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.
17. Last but not the least, reference may be made to State Of Uttarakhand & Anr vs Shiv Charan Singh Bhandari & Ors decided on 23 August, 2013 wherein the Hon’ble Apex Court on the question of laches and delay in coming to the court held that “There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to

suffer. As I perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. I may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

18. In the present case, the claim of the applicant seeking reliefs which were available to him in the year 1997-98 is being made the subject matter of the present O.A filed in the year 2014, it is a stale and dead claim and cannot be entertained beyond the period of limitation.
19. In the light of the aforesaid settled principle of law and facts of the case as noted above, I am of the view that the applicant has failed to make out a sufficient cause for not making the original application within the period of limitation as envisaged by Section 21 of the Act and therefore the O.A. is barred by period of limitation.
20. Even, on merits, the O.A. cannot be accepted. The reason being that father of applicant was not in government service at the time of his

death. Even, if the case of applicant is accepted that the concerned Union Ministry promised job on compassionate basis, it would be not lie within the jurisdiction of this tribunal to grant the relief. Remedy of applicant would not lie in this tribunal since the subject matter of the O.A. is not covered by the definition of 'Service matter' in Section 3 (q) of the Administrative Tribunal Act, 1985.

21. The relief cannot also be given on the ground that the defendant of a deceased person is not entitled to be considered for compassionate appointment since the deceased was not in Government service at the time of his death. Reference may be also made to National Institute of Technology v/s Niraj Kumar Singh, (2007) 2 SCC 481, wherein the Hon'ble Apex Court held that -

"16. Rule 5 of the Rules would apply provided the deceased was a government servant. Indisputably, the deceased were neither in permanent employment nor were appointed on temporary basis. At the relevant time a complete ban was imposed on appointment of daily wagers."

22. In view of the facts and circumstances of the case as well as the settled law, applicant is not entitled to the reliefs sought in the O.A. Accordingly, the O.A. being meritless is dismissed. No order as to costs.

**(Rakesh Sagar Jain)
Member (J)**

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