

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Allahabad, this the _____ day of _____, 2019

Present :

Hon'ble Ms. Ajanta Dayalan, Member-A

Hon'ble Mr. Rakesh Sagar Jain, Member-J

Original Application No.330/00624/2016

1. Ashok Kumar Yadav, aged about 52 years, S/o late Shri Ram Swaroop Yadav, working as Helper Ticket No.W- 1300133, Group 'D' Welding Shop, Railway Workshop, North Central Railway, Jhansi (U.P.) R/o Kemasn Puram, Karguan, Near Medical College, Jhansi 284001, District – Jhansi, UP.
2. Riyaz Babu aged about 48 years, S/o Shri Abdul Latif, working as Helper Ticket No.W- 1300132, Group 'D' Yard Modernisation Cell, Railway Workshop, North Central Railway, Jhansi (UP) R/o No.665, CP Misson Compound, Near Kanpur Rail Line, Gwalior Road, P S Sipri Bazar, Jhansi 284003, District – Jhansi UP &
3. Chhail Behari aged about 54 years S/o Shri Lallu Ram, working as Helper Ticket No.W – 1300131, Group 'D' Blacksmith Shop, Railway Workshop, North Central Railway, Jhansi, R/o House No.330-331, Behind Gudri Wine-Shop, Jhansi, District – Jhansi (UP).

.....Applicants.

By Advocate – Applicants are present in person.

VERSUS

1. Union of India, through the Chairman, Railway Board, Ex-Officio Principal Secretary, Government of India, Ministry of Railways, Rail Bhawan, New Delhi – 01;
2. The General Manager, North Central Railway, Saraswati Parisar, Subedarganj, Allahabad, U.P.
3. The Chief Workshop Manager, North Central Railway, Jhansi U.P.

..... Respondents

By Advocate : Ms. Shruti Malviya

ORDER

By Hon'ble Mr. Rakesh Sagar Jain, Member-J :

The present Original Application has been filed by applicants Ashok Kumar Yadav, Riaz Babu and Chhail Behari seeking the following reliefs:

- "(i) To Allow the OA and quash the impugned orders direct the respondents to place the petitioner at par with the persons who had secure lesser marks and lower position in merit list (Ann. A-3) but were engaged prior to the petitioners, say Mohd Niyaz (Ann. A-6) and grant promotional benefits at par with him;***
- (ii) To pass such other or further orders or directions as deemed just proper in the facts and circumstances of the case besides the cost and expenses of the present litigation for dragging the petitioner into un-necessary litigation."***

2. Applicants' case is that they are holders of National Apprenticeship Certificates and vide order dated 03.03.2014 were regularised on the post of Helper w.e.f. 03.02.2014. Applicants aver that they filed representation (Annexure A-18) against the order dated 03.03.2014. Respondent No. 3, without considering their representation, circulated Seniority list vide letter dated 13.10.2015 and rejected their claims vide order dated 27.10.2015 without sending the same to the Authorities to whom the representation was addressed.

3. It is the further case of applicants that their seniority has not been determined in terms of directions dated 02.06.2002 given by this Tribunal in O.A. No. 1021 and 1215 of 2001 and provisions contained in Chapter III of Indian Railway Establishment Manual – 1, 1989 as well as the

directions given by this Tribunal in 1101 of 1997 and O.A. No. 511 of 2001 vide order dated 16.04.2002. Therefore, applicants seek directions to the respondents to place the petitioner at par with the persons who had secured lesser marks and lower position in merit list but were engaged prior to the petitioners, say Mohd Niyaz and grant promotional benefits at par with him.

4. The stand of respondents is that the applicants are demanding seniority by comparing themselves with one Mohd Niyaz who is trained in Wireman Trade whereas applicants belong to Fitter and Carpenter Trade and different trades have different seniority lists prepared at different levels. Hence the O.A. deserves dismissal.

5. We have heard and considered the arguments of learned counsels for the parties and gone through the pleadings of the parties in the shape of O.A., counter affidavit, rejoinder and supplementary counter affidavit as well as written arguments filed by both the parties. The written argument filed by the applicants is a concise form of their O.A.

6. It is averred in the OA that Mohd. Niyaz was engaged as Khalasi in pay scale of Rs. 750-940 vide order dated 2.8.1990 whereas the applicants on their own showing were appointed as Helpers in the year 2014. Therefore, the applicants cannot claim parity with Mohd. Niyaz. The applicants seek implementation of order dated 16.4.2002 passed by the Tribunal in OA No. 1101 of 1997 whereby respondents were to maintain list of Trained Apprentice according to their seniority in merit and batch and appointments to be made in accordance with seniority

in the list so maintained. Even on the own showing of the applicants, Mohd. Niyaz was engaged in the year 1990 whereas applicants were appointed in the year 2014 and they seek implementation of order dated 16.4.2002. Even if Mohd. Niyaz got less marks than the applicants as per their National Apprenticeship Certificate, the cause of action, if any, to the applicants was to file an O.A. in the year 1990 when as per their own showing Mohd. Niyaz though junior to them was appointed, which appointment was prior to the appointment of the petitioners.

7. Argument was raised by the respondents that the O.A. is barred by period of limitation as envisaged by Section 21 of the Act since the cause of action pertains to the year 1990 when, as per, the applicants, one Mohd Niyaz junior to the applicant was appointed and they claim seniority with said Mohd Niyaz whereas applicants submitted that there is no delay in filing the O.A. and the delay, if any, has been satisfactorily explained in the application.

8. 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

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(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”.

9. 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 laid down the limitation applicable to an application for condonation of delay are of which is as follows : “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.”

10. 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)".

11. It is thus 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 or else there should be sufficient cause for delay which is to be duly explained by the applicant.

12. In the instant case, applicant seeks relief of seniority pertaining to the year 1990. Therefore the cause of action, if at all, occurred to the applicants in the year 1990 whereas the present *lis* has been filed in the year 2016. Undoubtedly, there has been a long delay in filing the O.A. Applicants have not given any sufficient reason, let alone a plausible

reason to explain the delay in filing the present O.A. from the year 1990. In fact no application for condoning the delay in filing the O.A. has been filed by the applicants.

13. The approach of the applicants 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 applicants to seek remedy, are 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 petition needs to be dismissed.

14. Last but not the least, reference may be made to State Of Uttaranchal & Anr vs Shiv Charan Singh Bhandari & Ors on decided on 23 August, 2013 wherein the Hon'ble Apex Court on the question of laches and delay in coming to the court to decide matters of seniority, held as follows :

"We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. 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 we 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. We 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."

15. Even, the fact of their making representations does not help the cause of applicants in taking the stand that their claim is not barred by period of limitation. On the question of filing representations and the legal effect, it was held by Hon'ble Apex Court in:

- i. Union of India & Others Vs. M.K. Sarkar (2010) 2 SCC 58:- "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 can not 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"
- ii. Jacob vs. Director of Geology and Mining, (2008) 10 SC 115 that:- 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.

10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."

16. It is a settled principle of law that the doctrine of delay and laches should not be lightly brushed aside. A 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 jurisdiction. 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. In the facts of the present case, the claim of the applicant seeking relief of seniority, pay scale etc. which, if at all was available to them in 1990 is being made the subject matter of the present O.A filed in the year 2016, it is a stale and dead claim and cannot be entertained at this long lapse of time.

18. In view of the facts and circumstances of the case, we are of the opinion that the present O.A. is hopelessly barred by period of limitation.

19. Even on merit, the case of the applicants does not justify its acceptance for grant of the relief sought by them. The stand of respondents is that the applicants are demanding seniority by comparing themselves with one Mohd Niyaz who is trained in Wireman Trade whereas applicants belong to Fitter and Carpenter Trade and different trades have different seniority lists prepared at different levels, which demolishes the case set up by the applicants.

20. In the facts of the present case, the claim of the applicants is a stale and dead claim and cannot be entertained after this long lapse of time. Even, otherwise, the applicants have no merit in their favour. The O.A. is dismissed. No orders as to costs.

Member-J

Member-A

RKM/