

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This the 07th day of May 2019

HON'BLE MS. AJANTA DAYALAN, MEMBER -A

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 300/01598/2014

1. Rajeshwari Prasad Mishra son of Algoo Prasad Mishra resident of village Siswa, Post Khamariya Bujurg through Bhabhnan Sugar Mill, District Gonda.
2. Dina Nath son of Late Luddur Ram resident of Village Rajpur (Karota), Mangari, District Varanasi.

.....Applicants

By Advocate: Shri R.P. Singh

Versus

1. Union of India through Secretary, Ministry of Communication, New Delhi.
2. Chief Post Master General, U.P Circle, Lucknow.
3. Post Master General, Allahabad Zone, Allahabad.
4. Director of Postal Services, Allahabad Zone, Allahabad.
5. Senior Superintendent of Post Offices, East Zone, Varanasi.
6. Senior Post Master, Head Post Office, East Zone, Varanasi.

. . . Respondents

By Adv: Shri V. K Pandey

ORDER

BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

1. The present O.A has been filed by the applicants Rajeshwari Prasad Mishra and Deena Nath seeking following reliefs:-
 - i) Issue an order or direction in the nature of certiorari quashing the order dated 23.6.2014 passed by Senior Superintendent of Post Offices, East Zone, Varanasi respondent No.5.
 - ii) Issue an order or direction in the nature of mandamus directing the respondents to declare that the applicant No.

1 and 2 are entitled to the appointment on the posts of Bearer and Sweeper respectively in the Postal Departmental Canteen at Head Post Office, Varanasi with all consequential benefit.

- iii) Issue any other/further order or direction to which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- iv) award cost of the application to the applicants".

2. Case of applicants Rajeshwari Prasad Mishra and Deena Nath is that they were appointed as Bearer and Sweeper respectively in the Departmental Postal Canteen, Head Post Office, Varanasi (Postal Service) in the year 1991 but their services were terminated vide order dated 20.2.1992. One Devendra Kumar Singh was appointed as Coupon Clerk in aforementioned Canteen, whose services were also terminated. The order of termination was challenged by the applicants including Devendra Kumar Singh in O.A. No. 673 of 1992 wherein the Tribunal vide order dated 4.5.1993 held that:-

"..... in case posts are still available, there appears to be no reason as to why their cases cannot be scrutinized and screened, and if they are found suitable why their services cannot be regularized or given fresh appointment, in preference to a new comer.

4. Accordingly, the respondents are directed to consider the case of the applicants in view of the above directions. In case they are found fit after screening they may be given fresh appointment or they may be regularized instead of giving appointment to any other persons as the process of advertisement and selection is followed in their cases, may be by competent or incompetent authority, against whom no action has been

taken. With the above observations the application stands disposed of. No order as to costs".

3. The order dated 4.5.1993 of the Tribunal was challenged in S.L.P which was disposed of by the Hon'ble Apex Court vide order dated 4.8.1994 which reads as under:-

" Delay condoned.

The Tribunal has directed the Union of India to screen the respondents'-applications again by giving them first opportunity. We are of the view that in case the Union of India invites fresh applications and consider the respondents along with fresh applications, it would not be violating the spirit of order of the Tribunal. We, however, make it clear that in case the respondents are found fit in the fresh screening, they would be given preference for appointment over the fresh applications. The Special Leave Petition is disposed of".

4. Applicants have referred to case of Devendra Kumar Singh (D.K. Singh), who was informed by respondents vide order dated 16/19.07.2004 (Annexure VA to Compilation II) that there is a ban on appointment and his appointment shall be considered when the ban on fresh appointments is removed.
5. This order dated 16/19.7.2004 was challenged by D.K. Singh in O.A No. 1141 of 2004 which was disposed of by C.A.T. Allahabad vide order dated 5.7.2005 wherein the Tribunal took note of the following portion of the order dated 16/19.07.2004, which reads as under:-

"bl in ij fu; DRk grq ekuuh; LokPp U;k;ky; ds mDr vlnsk ds lk'pkr vkonu i= vc rd eks gh ugh x;s D;kfd Hkkjr Ijdkj foRr e-ky; ds vlnsk l[k; 7 1/2%@b 1/2%@99 fnukd 5-8-99 ds vuq kj fu; DR; k ij jkd yxk; h x;h gS rFkk dkfebl ,oa if'k[k.k e-ky; ds vlnsk l[k; k

3@9@92 Dir 12½ fnukd 22-6-98 ds vuq kj ,d o"l l s vf/kd
 l e; l sfjDr jgus ij in lekIr l e>k tkrk gA
 vr%Jh nshz dekj fl g ds diu Dydz %okjk.kl h dSVhu½ ds
 in ij fu;Dr djus dk vksk vkh ugh fn;k tk l drk gA
 Hko"; ea tc ikV Hkus ij jkd gVxh rFk in iqthor fd;s
 tk; xa rFk tc u;s fljs l s vkonu i= eak;s tk; xk ekuuh;
 l okp U;k; ky; ds vksks dk ifjiky djuK l fuf'pr fd;k
 tk; xk"

6. The Tribunal in the said O.A. NO. 1141 of 2004 observed that the ban to fill the vacancy, is lifted by Ministry of Personnel, Public Grievance and Pension, DoPT in its O.M. No. 3/1/92-Dir (2) dated 22.6.1998 and held that:-

"In the circumstances, therefore, it is now clear that there is no ban on appointment and the applicant is entitled to be considered in the light of the direction given by the Apex Court. Shri S. Singh, learned counsel for the respondents then submitted that the vacancies which remain unfilled for a period of more than one year would be deemed to have lapsed in terms of the M/o Finance, D/o Expenditure, New Delhi O.M. dated 03.05.1993. The O.M. quoted in paragraph 3 (F) of the CA provides that such vacancies could be filled up by the department by following the normal procedure for creation/revival of posts and since the ban on appointment has been lifted, the order impugned herein is liable to be quashed. The applicant is held entitled to be considered for appointment.

In the circumstances, therefore, the O.A. succeeds and is allowed. The order impugned herein is set aside. The respondents are directed to consider the case of the applicant in the light of the order of the Apex Court passed in SLP referred above within a period of four

months from the date of communication of this order. No costs."

7. On the strength of order dated 5.7.2005 passed by Tribunal, respondents passed the order dated 6.4.2011 (Annexure XI) appointing D.K. Singh. The appointment order reads as under:-

"Ekkauh; I h0 ,0 Vh0 bykgkckn ea nkf[ky vk0 ,0 u0 1141@2004 Mh0 d0 fl g cuke Hkjr I 2k ea ekuuh; I h0 ,0 Vh0 }kjk ikjr vknsk fnukad 05-07-2005 ds vuqkyu eamDr Jh Mh0 d0 fl g i4 Lo0 Hkjr fl g fuokl h edku u0 t&1@4 'ksku cktkj t5igk okjk.kl h dks fglhw fo'o fo?ky; mi Mkd?kj okjk.kl h ea uo lfr ,e0 Vh0 ,l0 xj I h ds in ij 5200&20200 + xM is 1800 ds orueku ea bl 'krZ ds l kFk vLFk; h fu; DRk dk vknsk tkjh fd;k tkrk gS fd muga d0nh; fl foy l ok 1/4kpj.k1/2 fu; ekoyh 1964 ds vlrxr l ok ds ;k; u ik;s tkus rFk iLr4 ey iek.k i=ks ds l gh ugh ik, tkus ij fdl h Hh l e; l ok l sgVk;k tk l drk gA

bl l 2k ea ;g Hh Li"V fd;k tkrk gS fd mDr Jh Mh0 d0 fl g mDr in ij dk; Hkjr xg.k djus ds i0Z viuh 'k{k d ;k;rk l 2kh iek.k i=] fuokl iek.k i= ,oa nks jktif=r vf/kdkfj; ka }kjk tkjh pfj= iek.k i= dh ey ifr rFk viuh LokLFkrk dk iek.k i= iLr4 djA".

8. As per the applicants, D.K. Singh was appointed vide letter dated 4.6.2011 and the applicants filed representations dated 25.2.2012 and 4.4.2014. The representation dated 4.4.2014 was rejected by respondent No. 5 vide order dated 23.6.2014 (Appendix No.1) on the ground that the directions of the Hon'ble Supreme Court could not be implemented for the reasons mentioned as below:-

"4-fuEu dkj .ks l s ek0 l qhe dkWZ ds mi jkDRk vknsk dk ikyu ugh gks l dk&

v- D;kafd fu; DR ij ifrcW/k yxk FkA

c- D;kafd mDr dSVhu ds fjDr in ij ,d o'Z ckn er gks pps Fks muga iqtfoZ fd, fcuk ml ij fdl h dks yxk;k ugh tk l drk FkA

1- D;kamDr dSVhu dh vk; rFkk c\$jj dsfjDr in ij dk; Bkj de gkus l sml ij fu; qDr dk vk\$pr; ugh gA

n- D;kafd ik\$Vy dSVhu okjk.kl h iz\$ku Mkd?kj Mh Vki dk foHkxh; dSVhu gA u;s fu; e ds vuq kj Mh Vki ds foHkxh; dSVhu ea Lohij dk dk;Z vkmV l \$l \$ l s dj; k tkuk gA

5- ;g Bhd gSfd ik\$Vy dSVhu okjk.kl h iz\$ku Mkd?kj ea o\$jj ds nks inkaeal s, d in o'Z 2003 l sfjDr gA fdUr qo\$jj dk ;g fjDr in er gk\$ppk gA mDr dSVhu dh vk; , oa o\$jj in ds dk; Bkj dks n\$kr\$ gq bl fjDr in dks Hjus dk vk\$pr; ugh gA Lohij dk , d in fjDr gSft l ij fu; ekuq kj vkmV l \$l \$ l s dk;Z l Eiknr dj; k tkuk gA

vr%, d h fLFkr ea vki dks l \$pr djuk gS fd fQygy fudV Hko"; ea ik\$Vy dSVhu okjk.kl h iz\$ku Mkd?kj ea o\$jj , oa Lohij ds in ij l h/kh HkrhZ l s dkoZ fu; qDr ugh gkuh gA fQj Hh ;fn dHh fu; qDr dk l \$kx gkr\$ gS rks vki ds d\$ ea ekuuh; l qe dk\$Z ds vkn\$ k fnukad 04-08-94 ds vuq kj m\$pr dk; Bkgh dh tk; xhA"

9. So, as per, letter dated 23.6.2014, the order of Hon'ble Supreme Court could not be implemented as there is a ban on the appointment and since the vacancies existed in the canteen for one year, appointment could be made without reviving the posts. Due to decrease in income of canteen and low workload, there is no necessity of fresh appointment of bearer whereas the work of sweeper has been outsourced. The applicants were informed that at present, there is no appointment of sweeper and bearer being processed by direct recruitment. However, as and when the process of direct recruitment is initiated, the case of applicants would be considered, as per, directions of the Hon'ble Supreme Court.

10. It is the case of applicants that the rejection of their representation is illegal and in violation of the orders of Hon'ble Apex Court and Tribunal. Even though respondents have informed the applicants vide impugned order dated 23.6.2014 that there is a ban on appointment but the Tribunal in its order

in OA 1141 of 2004 has clearly laid down that the ban was lifted by the Government of India and for this reason DK Singh was appointed to the post of M.T.S Group 'C'.

11. It is further case of applicants that the impugned order dated 23.6.2014 is in contravention of order dated 4.8.1994 of the Hon'ble Apex Court as the Hon'ble Apex Court had given the respondents option to invite fresh applications or to regularize the applicants but the respondents for ulterior motive did not invite fresh application till date. Applicants in O.A. have averred that:-

"4.39 That it is submitted that the Director (Estt & DE) Government of India, Ministry of Communication, Department of Posts, New Delhi vide his letter dated 29/31.12.2010 that revival of the post of Bearer in the Varanasi H.O. Canteen, this Directorate has advised the Circle that the proposal to revive the said post may be submitted to this office as per the guidelines of Ministry of Finance issued vide letters dated 9.9.2003 and 24.2.2006. It is again reiterated here that revival of posts need functional justification, matching saving out of a live post in the same scale of pay or a grade below, it should neither be a direct recruitment vacancy nor an abolished post. It is further submitted that another letter dated 21.1.2011 was served by the respondent No.1 stating that "VRN HO Canteen" is D Type canteen. As per orders, canteen which serves 100 to 200 employees, there should be two posts of bearer. Varanasi H.O. Canteen serves 230 employees and work of bearer cannot be managed by one bearer as the post of Wash boy and Safaiwala (Sweeper) are also running vacant as such there is fully justification for reviving of the other posts of bearer which is lying vacant since 1.6.2014. It is also crystal clear here

that respondents authorities are indulge in malpractice and harassing the applicants by recording perverse finding in the impugned order dated 23.6.2014. The true copy of aforesaid letter dated 29/31.12.2010 and letter dated 21.1.2011 are being annexed as Appendix XV and Appendix XVI to Compilation – II.

4.40 That the respondents taken another ground in rejecting the representation of applicants that income of canteen is very less therefore no justification to appoint another bearer. This contentions of the respondents are wholly false, incorrect and in contravention of the affidavit filed. In the contempt petition No.12 of 2009 in original application No. 1141 of 2004.

4.41 That the respondents taken another ground in the impugned order that HO Canteen is D Type canteen and the work of Sweeper is done from out sources according to new rule is wholly illegal. The applicants are entitled the same reliefs which was led down by this Hon'ble Court by judgment dated 05.07.2005 of the Apex Court in case of K.C. Sharma Vs. Union of India & others. A true copy of judgment is being filed as Appendix XVII to Compilation II".

12. We have heard and considered the arguments of learned counsels for the parties and gone through the material on record as well as written argument of respondents.
13. Learned counsel for the applicants in the first instance argued that the order dated 23.6.2014 passed by respondent no. 5 contravenes the order dated 4.8.1994 passed by Hon'ble Apex Court. Respondents have taken the plea that in future, if any, direct recruitment takes place to the post of sweeper and bearer, appropriate proceeding in terms of order of Hon'ble Apex Court in respect of giving employment to the applicants

would be implemented. Learned counsel submits that as per the order of Hon'ble Apex Court, respondents were given option to invite fresh applications or to regularize the applicants but the respondents for ulterior motive did not invite fresh application till date. Hence, direction sought by the applicants for their appointment should be issued by the Tribunal.

14. On the other hand, learned counsel for the respondents submitted that the respondents have not violated the order of the Hon'ble Apex Court in any manner whatsoever and wrong interpretation is being put on the order of the Hon'ble Apex Court by the applicants.
15. The order dated 4.8.1994 of the Hon'ble Apex Court is to the effect that in case respondents invite fresh application, they would consider the applicants with the fresh applicants and it would not violate the order of the Tribunal but made it clear that in case applicants are found fit and fresh screening, they would be given preference for appointment over the fresh applications (Emphasis ones).
16. Looking to the order of the Hon'ble Apex Court, it is clear that wrong interpretation is being given of the said order by the applicants that respondents were to invite fresh application or to regularize the applicants. The order of the Hon'ble Apex Court is clear that the applicants would be given preference for appointment in case the respondents invite fresh applications. In the present case, it is only if and when the respondents invite applications for recruitment, it would be incumbent upon the respondents to give preference to the applicants over the fresh applicants. Therefore, there is no direction by the Hon'ble Apex Court to the respondents that they have to invite applications for recruitment but it has been observed that in case the Union of India invites fresh applications that it would be necessary for the Union of India to give preference to applicants over the

fresh applications. Accordingly, this contention of learned counsel for the applicants has no force of law and to be rejected.

17. It is also argued by learned counsel for the applicants that since the ban has been lifted on fresh appointment as observed by the Tribunal in OA No. 1141/2004 and D.K. Singh has been given appointment in the Canteen, the applicants have been discriminated against and they should be given parity with D.K. Singh on similar grounds.
18. However, the facts of case of D.K. Singh are distinguishable from the case of applicants. In the case of D.K. Singh it was held by the Tribunal that since there was no ban on appointment and the vacancies which remained unfilled for a period of more than 1 year would be deemed to have lapsed and in these circumstances respondents were directed to consider the case of D.K. Singh in light of the order of the Hon'ble Apex Court.
19. In the present case, the arguments raised by learned counsel for respondents is that the facts of the case of D.K. Singh and the facts projected in the present case are entirely dissimilar and, therefore, the applicants are not entitled to reliefs keeping in view the facts raised by the respondents. Elaborately further, learned counsel for respondents submitted that in the case of D.K. Singh, the relief was based on the facts that the ban on fresh recruitment had been lifted by the Government and the post of Coupon Clerk stood revived but in the case of applicants the facts are entirely different. The services of the applicants were not utilized by appointing them since the post of bearer was not filled up due low income and reduction in the business of the canteen and the work of sweeper had been outsourced and the appointments have been deferred

20. We have also carefully perused the pleadings available on record. The contention of the respondents that the services of the applicants were dispensed with and fresh appointment of bearer and sweeper has been deferred since the income and the work of the canteen has reduced and the work of sweeper has been outsourced, is an administrative decision and cannot be faulted with.

21. It is a settled principle of law that Court cannot arrogate to itself the powers of the executive or legislature and cannot direct any selection of posts. In this regard, reference may be made to law settled by Hon'ble Apex Court as under:

(1) P.U.Joshi vs. Accountant General (2003)2 SCC 632 :

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by

undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

(II) Indian Drugs & Pharmaceuticals Ltd. vs. Workman, Indian Drugs & Pharmaceuticals Ltd., (2007) 1 SCC 408 :

"When the State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize quo any matter which under the constitution lies within the sphere of the legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers".

The courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts,

regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The relevant case law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in *Rama Muthuramalingam vs. Dy. S.P.* AIR 2005 Mad 1, and we fully agree with the views expressed therein."

(III) *Post – Doctoral Research Associates of S.V. University, Dr. K. Krishna Reddy and others vs. Union of India and others*, (2002) 5 SCC 24 the Research Associates' plea for directing UGC and CSIR to frame a scheme providing security of continuance in the work done by them, was rejected.

(IV) *State of Himachal Pradesh vs. Nodha Ram and others*, JT 1996 (1) 220:

"Directions cannot be given to regularize their services in the absence of any existing vacancies nor can directions be given to the State to create posts.."

(V) *Meharchand vs. Anu Lumba & others* in Civil Appeal No.7051/2002 decided on 8.8.2006:

"Only because the respondents have worked for sometime, the same by itself would not be ground for directing regularization of their service in view of the decision of this Court in *Uma Devi* (supra).... We set aside that part of the judgment whereby and where under the appellants had been directed to create posts and regularize the services of the respondents."

22. So, the law is well settled that orders for creation of posts, appointment on these posts, regularization, fixing pay scales, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a

rare and exceptional case. It is not for the Statutory Tribunals to direct the Government as to how to run the administration.

23. In the instant case, looking to the facts projected by respondents, it is clear that this Tribunal cannot direct the Government to make appointment. It is the sole prerogative of the Government to administer the affairs of the State. No doubt, in present case, the Hon'ble Apex Court directed that the applicants would be consider in preference to freshly recruit but this was subject to the condition that in case the Government initiates process for fresh appoint, it would give preference to the applicants in matter of appointment, which process has not been initiated in the present case.
24. However, assuming that applicants have a cause of action to institute the instant O.A. The question of the O.A. being barred by period of limitation arises. Indubitably, the applicants presented the first representation on 25.2.2012 and filed the O.A. on 26.11.2014. This clearly shows that the O.A.is barred by period of limitation, as per, Administrative Tribunal Act, 1985.
25. Section 21 of the Administrative Tribunals Act, 1985, deals with the limitation. That Section 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.”

26. 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.

27. In the instant case, applicants moved the representation on 25.2.2012 and which period of six months expired on 26.08.2012. Thereafter, it was incumbent to file the O.A. within a period one year from 27.08.2013. Therefore the cause of action to file the O.A. arose on 27.08.2013 but the applicants chose to file the O.A. on 26.11.2014 which is beyond the period of limitation settled by Section 21 of the Act. No application for condonation of delay has been filed and there is not even a whisper in the O.A for filing the same beyond the period of limitation. Delay and laches, on part of the applicants 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.

28. The applicants have not adduced any cause that prevented them 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)".

29. As observed by the Hon'ble Apex Court in Union of India Vs. Harnam Singh, 1993(2) S.C.C. 162, that the Law of Limitation

may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to aid of those who sleep over their rights and allow the period of limitation to expire.

30. In the light of the aforesaid observation of the Hon'ble Supreme Court, we are not satisfied that the applicants had sufficient cause for not making the original application within the period of limitation envisaged by Administrative Tribunal Act, 1985.
31. In the result, for the foregoing reasons, the present OA being devoid of merit and barred by period of limitation is dismissed. There shall be no order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

(AJANTA DAYALAN)

Member (A)

Manish/-