

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

ORIGINAL APPLICATION NO.060/00080/2019
Chandigarh, this the 12th day of March, 2019

**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Lakhvinder Singh aged around 32 years, son of Shri Harbans Singh,
resident of Village Mandheri Tehsil Shahabad (M) District Kurukshetra
(working as MTS (Group D) at post office Shahabad MDG- 136135

....Applicant

(Present: Mr. Subhash Chand, Advocate)

Versus

1. Union of India, Ministry of Information and Communication,
Sanchar Bhawan, New Delhi through its Secretary – 110001.
2. Director General Post Offices, Sansad Marg Area, New Delhi,
Delhi – 110001.
3. Secretary, Department of Posts & Chairperson, Postal Services
Board, Sansad Marg Area New Delhi – 110001.
4. Chief Post Master General, Haryana Circle, Ambala – 133001.

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Respondents

(Present: Mr. Sanjay Goyal, Advocate)

ORDER (Oral)
SANJEEV KAUSHIK, MEMBER (J)

1. MA No. 060/00465/2019 is allowed and the affidavit filed along
therewith by the respondents is taken on record.
2. The present O.A. has been filed by the applicant for issuance of
a direction to the respondents to prepare/fix a cut off merit of LGO
candidates, because no list of LGO candidates was prepared in
Haryana Circle whereas in other state list of LGO candidates is being
prepared.
3. After the preliminary hearing on 04.02.2019, the following order
was passed:-

“ The applicant takes a clue for cause of action for an
examination held on 7.7.2013, by communication dated
15.01.2019 (Annexure A-7) by Assistant Director, Postal

Services (Staff), Haryana Circle, Ambala, on his representation dated 27.02.2014 and submitted that since respondents have replied in the year 2019, there is no delay in filing the O.A.

Before we take a call to decide the controversy involved in the O.A. we direct Sh. Sanjay Goyal, SCGC, to find out necessity of passing the order dated 15.01.2019, which is taken as cause of action to allow applicant to file O.A. in 2019 and are also directed to file affidavit clarifying whether they have promoted any person in the category of the applicant out of the examination held in 2013.

List on 19.02.2019.”

4. After considering the fact that the examination was held on 07.07.2013 and the applicant submitted representation on 27.02.2014, which has been replied to vide letter dated 15.01.2019, the respondents were called upon to apprise this Court as to why they responded to the representation, after such a huge delay.

5. The respondents have filed an affidavit wherein they have submitted that they responded to the legal notice dated 12.11.2018 (Annexure A-6, vide letter dated 15.01.2019 and forwarded his representation for further action. Learned counsel clarified that no appointment has been made out of the selection process conducted in the year 2013, out of the category of the applicant which is under consideration herein, and no person junior to the applicant has been promoted, therefore no cause of action has arisen in his favour, therefore, this O.A. deserves to be dismissed being not maintainable. Learned counsel has also argued that the claim is hopelessly time barred and it deserves to be quashed for this reason also.

6. We have given our thoughtful consideration to the matter. The relevant examination was held in 2013 and therefore the limitation to challenge the validity of that selection was till 2014. However, the applicant has approached this Tribunal after a lapse of six years. No

direction, therefore, can be issued, at this stage, about the validity of the selection which has never been concluded, more so when no person out of category of applicant has been appointed. The claim of the applicant is hopelessly time barred and even if a belated fresh representation/legal notice is replied to, it cannot revive the time barred claims. To hold this view we are fortified by the judgment passed by the Hon'ble Supreme Court in the case of **UNION OF INDIA & OTHERS VS. M.K.SARKAR** 2009 AIR (SCW) 761, wherein it was ruled that limitation has to be counted from the date of original cause of action and belated claims should not be entertained. It was held as under:-

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115 "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."

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 cannot 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.

16. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

7. Even on merits, the applicant herein has challenged the validity of the selection, the outcome of which has not even seen the light of the day. The result thereof has never been declared. No promotion has been made in pursuance of that selection. It is not the plea of the applicant that he has been declared successful in the selection, but not promoted. Therefore, no prejudice was caused to the applicant out of that examination as no person has ever been promoted in pursuance to that selection, in category of the applicant.

8. In view of the above, the O.A. fails on both the counts, merit as well as delay. The O.A. is, accordingly, dismissed. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 12.03.2019

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