

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00146/2019

Chandigarh, this the 22nd day of February, 2019

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

...

Pawan Kumar Pathak son of Late Sh. Shankar Dass Pathak, age 61 years, House No. 2556, Sector 70 Mohali, Accounts Officer (Retired) of Semi Conductor Laboratory (SCL), Department of Space, Government of India, Sector 72, Industrial Area, Mohali - 160055 Group B

....Applicant

(Present: Mr. Vikam Singh, Advocate)

Versus

1. Union of India through the Secretary, DOS/Chairman, SCL Management Council Government of India, Department of Space (DOS), ISRO Headquarters, Antariksh Bhawan, New BEL Road, Bangalore – 560094.
2. Semi Conductor Laboratory (SCL), Department of Space, Government of India, Sector 72, Industrial Area, SAS Nagar (Mohali) Punjab – 160071 through Director SCL.
3. The Controller, Semi Conductor Laboratory, Department of Space, Government of India, Sector 72, Industrial Area, Mohali, Punjab – 160055.

..... Respondents

**ORDER (Oral)
SANJEEV KAUSHIK, MEMBER (J)**

1. By way of the present O.A., the applicant has challenged the Minutes of meeting dated 27.10.2014 (Annexure A-5), which were supplied to him, vide letter dated 24.07.2015, in response to his application filed under RTI Act, 2005. Vide these minutes (Annexure A-5), the respondents have denied the benefit of 3rd financial up-gradation w.e.f. 01.07.2014, as prayed by the

applicant, on the ground that he has been granted 2nd financial up-gradation on 01.09.2008 and is eligible for 3rd financial up-gradation on completion of another 10 years thereafter i.e. 01.09.2018, while he would be completing 30 years of service on 30.07.2020.

2. Heard learned counsel for the applicant.

3. Learned counsel, on being asked about the maintainability on the point of limitation, argued that if the benefit of financial up-gradation is allowed to the applicant, his pay would be re-fixed and since pay fixation is a recurring cause of action, therefore, this petition needs not to cross the hurdle of limitation.

4. We have given our thoughtful consideration to the entire matter and perused the impugned order.

5. A perusal of the impugned order makes it clear that an employee will be entitled for 3rd financial up-gradation on completion of 30 years of service or on completion of 10 years from the last up-gradation/promotion. It has further been informed that since the applicant has been granted 2nd financial up-gradation on 01.09.2008, he would be eligible for 3rd financial up-gradation on completion of another 10 years thereafter i.e. 01.09.2018, as he would be completing 30 years of service on 30.07.2020, at a later stage. Since on 27.11.2014, the decision to grant 3rd financial up-gradation w.e.f. 01.09.2018 to the applicant was taken, therefore, the cause of action arose in his favour on that date and the limitation was up to 27.11.2015, but the applicant chose to sit over

the matter for more than three years and approached this Tribunal, for redressal of his grievance, only in the year 2019.

6. Rule 21 of the Administrative Tribunals Act, 1985, regarding limitation has been well explained in a number of cases that an aggrieved person can approach the Tribunal for redressal of his grievance within one year from the date the cause of action arose in his favour and it gets extended for another six months if any appeal or representation is filed against action of authorities. Mere fact that the pay of the applicant would be fixed, in consequence of grant of MACP, would not make it a recurring cause of action. It is not his case that the respondents have passed an illegal order on the basis of revision of pay which was admissible to him on completion of 30 years of service which has been turned down.

7. An identical question came to be decided by a three Judges Bench of Hon'ble Apex Court in the case of **BHOOP SINGH V. UNION OF INDIA ETC.**, (1992) 3 SCC 136, wherein it was ruled as under:-

"Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence."

8. Likewise, in the case of **UNION OF INDIA & OTHERS VS. M.K.SARKAR** 2009 AIR (SCW) 761, 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 'state' 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."

11. Therefore, it is held that the O.A. is barred by time and has to be dismissed accordingly. Even on merits, the applicant has been granted 2nd financial up gradation w.e.f. 1.9.2008, and 3rd financial up gradation would be due w.e.f. 1.9.2018. Thus, he has already got due benefits available to him including promotions. The issue

as to whether the promotions already earned by him are to be set off against MACP or not is not before us and we cannot comment upon the same. Needless to mention that O.A. fails being barred by law of limitation, delay and laches and even on merits and as such it is dismissed accordingly. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 22.02.2019

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