

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.3723 of 2016
M.A.No.3275 of 2016

Orders reserved on 04.02.2019

Orders pronounced on : 07.02.2019

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

Manish Chaudhary Aged 27
Roll No.406403 (OBC)
Candidate for Constable (Ex.)
Recruitment -2009 (Phase-I)
Date of Birth 1.7.1989
S/o Sh. Partap Singh,
R/o No.C-111, 3rd Floor,
Jhilmil Colony, Delhi-95.

....Applicant

(By Advocate : Shri Anil Singal)

VERSUS

1. Govt. of NCT of Delhi,
Through Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi.
2. Deputy Commissioner of Police,
Recruitment, New Police Lines,
Kingsway Camp, Delhi.

.....Respondents

(By Advocate : Ms. Asiya for Mrs. Rashmi Chopra)

ORDER

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties on Misc.
Application No.3275/2016 (Condonation of Delay).

2. By filing the OA, the applicant is seeking the following reliefs:-

- “1. To direct the respondents to evaluate the OMR sheet of the applicant in respect of Roll No.406403 and if secured 55 or more marks then conduct his interview.
- 2. To issue appointment letter to him and appoint him to the post of Constable (Ex.) in Recruitment-2009 (Phase-1) in case he secures 66 or more marks with all the consequential benefits.
- 3. To award costs in favour of the applicant and pass any other or orders which this Hon’ble Tribunal may deem just & equitable in the facts & circumstances of the case.”

3. Since there is delay in filing the OA, the applicant has also filed a Misc. Application bearing MA No.3275/2016 seeking condonation of delay of over 5 years and 06 months from 8.4.2010 in filing the Original Application.

4. In the instant OA, the applicant is seeking directions to the respondents to evaluate the OMR sheet of the applicant and to issue appointment letter to him to the post of Constable (Ex.) in Recruitment-2009 (Phase-I). The applicant has himself stated in the condonation of delay application that there is a delay of 5 years and 6 months from 8.4.2010 when final result was declared, though he states there is no delay from the date the applicant came to know of the fraud committed by the respondents. Learned counsel for the applicant stated that the applicant has a very good case in his favour on merits and the said delay was beyond the control of the applicant as explained in the OA and that no prejudice

has been caused and will be caused to the respondents, if delay in filing the present OA is condoned, otherwise applicant will suffer irreparable loss and injury and further the delay in filing the accompanying OA is neither intentional nor deliberate.

5. The respondents have filed reply to the said MA and have categorically raised the preliminary objection of limitation in this case as the applicant espouses a stale claim (if any) after a period of 5 years from the date of cause of action (if any). The representation of the applicant stands decided in the year 2012 and this representation after four years cannot lead to a fresh cause of action. The respondents have also referred to Section 21 of the Administrative Tribunals Act, 1985. Respondents have also placed reliance on the judgments of the Hon'ble Supreme Court in the cases of **DCS Negi vs. Union of India and others**, decided on 7.3.2011 in SLP (C) o.7956/2011 (CC No.3709/2011); **State of Tripura vs. Arabinda Chakraborty**, (2014) 5 SCALE 335; **Nadla Distt. Primary School Council vs. Sristidhar Biswas**, AIR 2007 SC 2640; **UOI vs. SS Kothiyal**, 1998 (8) SCC 682; **Jai Gupta Vs. State of H.P.**, 1997 (11) SCC 13; and **T.K. Bhardwaj vs. Director General of Audit and others** (WP (C) No.2610 of 2011) decided by the Hon'ble Delhi High Court.

5.1 It is further stated that it is trite that a reply under Right to Information Act to a belated application does not give rise to any cause of action especially as equities are created in favour of candidates at the relevant time. They further stated that no cogent reasons are contended by the applicant for belatedly approaching this Tribunal, let alone explaining the day to day delay, which in itself constitutes a reason for not entertaining the present OA and hence, the present OA is barred by limitation and cannot be entertained, as there is a delay of 1975 days, which is not explained at all by the applicant. As according to the respondents, the result was declared on 25.12.2009 and the applicant has filed an application under Right to Information Act in 2015. A response to RTI cannot revive a stale old claim and that the recruitment also cannot be interfered as the selections stand made in the year 2009 and pursuant thereto, the appointments made and the appointed candidates are working and no vacancies exist on the said post.

5.2 They also stated that the applicant had applied for the post of Constable (Exe.) Male in Delhi Police under OBC category during the recruitment held in the year 2009. Now after a gap of 05 years and 06 months, the applicant submitted various RTI applications/appeals and the suitable replies were given to him. There is no fraud and cheating on the part of the respondents. As such the action taken by the

respondents is legal and justified. In fact even the application under RTI Act has been moved in the year 2015 by which the applicant is setting forth a cause of action. Without prejudice, it is submitted that reply to RTI does not provide a cause of action and/or extend limitation, as the instant OA has been filed after a gap of 5 years and 06 months.

6. During the course of hearing, counsel for the applicant reiterated the grounds taken in the OA and submitted that due to fraud and cheating committed by the respondents and/or outsourced agency hired by them to conduct the recruitment examination-2009 (Phase-1) and as such the applicant's fundamental rights of fair consideration for appointment to Government servant in accordance with have been violated. He further submitted that the applicant came to know about this only when he received information under RTI Act and, therefore, thereafter the present OA has been filed for redressal of his grievance and the delay in filing the OA is neither intentional nor deliberate.

7. Counsel for the respondents besides reiterating the contents of the reply to the condonation of delay application submitted that applicant is seeking consideration of his case for appointment in respect to the recruitment process which was held in 2009 and the candidates selected against the post in question were appointed in 2010 and the present OA has

been filed 19.9.2016, i.e., after a lapse of more than 05 years from the date of finalization of selection which was initiated pursuance to recruitment process of 2009 and applicant has not chosen to give plausible explanation in filing the OA belated. Counsel further submitted that the present OA is not maintainable as there no cause of action as on date of filing of the OA and hence, the same is specifically barred under Section 21 of the Administrative Tribunals Act, 1985.

7.1 Counsel for the respondents further submitted that applicant is intentionally and deliberately filing this MA after a lapse of a period of 05 years and 06 months which is a serious delay on the part of the applicant as he is well aware that the records/data of non-selected candidates of recruitment held during the year 2009 (Phase-II) has been destroyed, as per instructions/rules contained in Standing Order No.212/2011 and Circular No.1, vide Office Order dated 5.3.2015 and has deliberately with a malafide intent filed the present OA.

7.2 The counsel for the respondents brought to our notice another case of identically situated candidate as that of the applicant in the instant case passed by Hon'ble High Court of Delhi in Writ Petition (Civil) No. 10489/2015 on 18.05.2016, titled **Hariom, Head Constable Vs. The Commissioner of Police and Ors**, wherein the Hon'ble High Court held that the

applicant in that case was a fence-sitters had approached the Court after a long delay and hence he is not entitled to any relief. Relevant para 11 of the said judgment of the Hon'ble High Court is extracted below:-

“11. The petitioner relies on **State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors.** (2015) 1 SCC 347. Having examined the factual matrix, we observe that the petitioner had failed to act at the relevant time and had woken up after a long delay, whereas his two counterparts in the Delhi Police had approached the Court at an earlier point of time and after a long battle had succeeded in August, 2013. The petitioner should not be given the benefit of the judgment as he was a fence sitter. In the meantime, in 2012, another examination was held, and vacancies were filled. We have already observed that the petitioner cannot claim any right on the vacancies or new posts of Sub Inspectors (Exe.) created post the vacancies, included in the Phase II, 2009 examination. There are other pertinent reasons as to why the bar of limitation would be attracted. As per the list available at page No.138 of the paper book, there were at least fifteen other departmental candidates, who had secured marks between 155 and 163 i.e., marks of the last open category general candidate and the last selected candidate under 10% departmental quota. Two unsuccessful candidates had approached the Tribunal in 2010 and order dated 22nd August, 2013 has been passed in their favour. Thirteen others including the petitioner would be entitled to a similar benefit in case the present writ petition is allowed. The respondents would have to redo and rework the entire exercise of finding out who would or would not have qualified from the open category. Law of limitation, sometimes perceived as technical and iniquitous, serves an important public purpose. It ensures certainty and negates ill effect when settled positions are sought to be altered. At the distinct point of time in 2014, about four years after the results of the 2009 examination were declared, the said exercise would create unforeseen complications and possibly litigation on issues like seniority. The open category candidates selected in the 2009 Examination have already joined. They are not impleaded. Question of seniority etc. with those selected in 2009 and 2012 would be an issue. This is not the

case of an illiterate or denied person not aware of his rights, who for economic and social reasons possibly had limited resources or had hesitated in approaching courts/ tribunals/authorities.”

8. After hearing learned counsel for the parties and also having carefully perused the pleadings on the record, this Court observes that this Tribunal is governed by the Administrative Tribunals Act, 1985, Section 21 of the Administrative Act, *ibid*, clearly provides as under:-

“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 subsection (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 sub-section (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 sub-section (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.”

8.1 The Apex Court as well as Hon’ble High Courts while dealing with this issue of limitation and also on the point of delay condonation passed various orders as enumerated below:-

(a) The Hon’ble Apex Court in **D.C.S. Negi v. Union of India & others** (Civil Appeal No.7956 of 2011) decided on 7.3.2011, condemned entertaining of the OAs by the Tribunal in disregard of the limitation prescribed under Section 21 of the Administrative Tribunals Act 1985. In the said order, following observations were made:

“Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the

Act have been entertaining and deciding the Applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21.

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)."

(b) The Apex Court in the case of **S.S. Rathore v. State of Madhya Pradesh**, (1989) 4 SCC 582. In the said case, the Hon'ble Supreme Court has held thus:-

"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub- section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the

appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue."

(c) In ***Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu***, (2014) 4

SCC 108, the Apex Court has been ruled thus:

"Thus, 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 scrutinise 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*".

(d) "**In A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and others**, (2007) 2 SCC 725 following the earlier judgment in **U. P. Jal Nigam's case**, it was opined as under:

"40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into

consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

(e) In the case of **State of Uttarakhand and another v. Sri Shiv Charan Singh Bhandari and others**, 2013(6) SLR

629, Hon'ble the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Relevant paragraphs from the aforesaid judgment are extracted below:

"13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In C. Jacob v. Director of Geology and Mining and another[1], a two-

Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -

“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.”

14. In Union of India and others v. M.K. Sarkar[2], this Court, after referring to C. Jacob (supra) has ruled that 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.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.

The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another*[3], the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen

therein had remained silent mere making of representations could not justify a belated approach.

16. In State of Orissa v. Pyarimohan Samantaray[4] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik[5].

17. In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others[6], a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana[7] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. In State of T.N. v. Seshachalam[8], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

“....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

8.2 In the light of the above said legal position of the various High Courts, especially in the case of **Hariom** (supra), and Apex Court as also having regard to the provisions of the Act *ibid*, it is clear that in order to get the benefit of limitation, the application has to satisfy this Tribunal that he was diligently pursuing his matter and was prevented by sufficient cause for not filing the OA within the period of limitation. Admittedly, the applicant in this case is seeking direction to

the respondents to evaluate the ORM sheet of the applicant in respect of Roll No.406403 and if he has secured 55 or more marks then conduct his interview and also appoint him to the post of Constable (Exe). in respect of Recruitment-2009 (Phase-1) in case he secured 66 or more marks with all consequential benefits, and the instant OA has been filed on 19.9.2016. Admittedly, the applicant has taken action to file the OA in the matter only in 2016 and if the case of the applicant is presumed to be correct even then, the reliefs as claimed in this OA cannot be granted by this Tribunal as there is no explanation whatsoever with regard to the period from the year of declaration of result, i.e., 2009 to the year 2015, If the applicant is aggrieved by the non-evaluation of his ORM sheet, he ought to have challenged the same at the relevant point of time as the final selection to the said post was completed in 2009 and pursuant thereto, the appointments made and the appointed candidates are working and no vacancies exist on the said post.

8.3 This Court also finds that in the Misc. Application seeking condonation of delay in filing the OA, the applicant has only stated reasons quoted above in his OA and as referred to above, but this Court does not find the same as satisfactory to condone the delay and this Tribunal is of the considered view that he was not diligently pursuing his

matter and was not prevented by sufficient cause for not filing the OA within the period of limitation.

9. In the result, and for the foregoing reasons, MA 3275/2016 is dismissed being devoid of merit and consequently, the OA is also dismissed as barred by limitation. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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