

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

O.A. No.2296 of 2018
M.A.No.2568 of 2018
M.A.No.2567 of 2018

This the 18th day of January, 2019

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

Sh. Vinay Kumar Sidh (DOB 01.07.1959) about 59 years
S/o late Sh. Chandu Shankar Sidh
B-306, Ground Floor Opp. Hanuman Temple,
New Panchvati, Ghaziabad, U.P. 201001.
Posted presently in Janki Devi Rajkiya Sarvodaya Kanya
Vidyalaya, Mayur Vihar, Phase-I, Pocket-II,
Delhi-110091.

....Applicant
(By Advocate : Shri Ashok Kumar)

VERSUS

1. Hon'ble Lt. Governor,
Raj Niwas,
Raj Niwas Marg,
Delhi-110054.
2. Govt. of NCT of Delhi,
Through its Hon'ble Chief Secretary,
Delhi Sectt. I.P. Estate,
New Delhi.
3. Secretary, Education,
Directorate of Education,
Govt. of NCT of Delhi,
Old Sectt.
Delhi.

.....Respondents
(By Advocate : Shri Rohit Bhagat for Shri Sourabh Chadda)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties on Misc. Application No.2568/2018 (Condonation of Delay).

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

- “(i) Direct the respondents for enhancing remuneration of the applicant on the same lines as of other class of teachers revised from time to time with further directions for not to revise condition of B.Ed. not envisaged at the time of recruitment and thereby treating the applicant as non qualified merely for not his fulfilling the new condition of being B.Ed.
- (ii) Direct the respondents to pay arrears of remuneration to the applicant for the interregnum period when remuneration of qualified teachers (possessing B.Ed.) were revised without enhancing the remuneration of the applicant on the so called ground of treating him non qualified in view of the new imposed condition of qualifying B.Ed.
- (iii) Award cost of the present OA in favour of the applicant and against the respondents.
- (iv) Pass any other or further orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case in favour of the applicant and against the applicant.”

3. Since there is delay in filing the OA, the applicant has also filed a Misc. Application bearing MA No.2568/2018 seeking condonation of delay in filing the Original Application.

4. In the instant OA, the applicant is impugning the Notification dated 6.7.2009 issued by the Govt. of NCT of Delhi whereby remuneration of Part-Time Vocational Teachers

on contract basis were revised qua the qualified teachers as per RRs to Rs.13160/- and qua non-qualified teachers to Rs.11140/-. The contention of the applicant that as per his joining w.e.f. 8.9.1993, he was engaged as a contract Teacher for teaching 11th and 12th classes of Vocational Stream Banking and there was no condition of having been B.Ed.

4.1 Applicant's counsel contended that the applicant could not file this OA earlier as he could not gather courage for raising the matter earlier as he is on contract basis and now just on the close of the heels of retirement in June, 2019 the applicant could file OA despite financial crunch and still the cause of action has been persisting as he is still being treated as non qualified whereas as per his academic qualification MA Eco. and M.Com as also after having acquired 25 years of experience he is fully qualified and B.Ed. qualification has nothing to do to render him non-qualified as has been treated to be attempted by the Govt. of NCT of Delhi for paying less remuneration on the so called erroneous ground of non-qualified. As such according to the applicant, there is apparently a delay of about 3 years 3 days after receipt of the reply from CBSE and further the cause of action is unabated as the same has been continuing uninterruptedly.

5. The respondents have filed reply to the said MA and have categorically raised the preliminary objection of

limitation in this case as there is an apparently delay of long 5 years in submission of representation by the applicant to the concerned authority as well as a total delay of 9 years in approaching this Tribunal challenging the impugned order that was rightly passed on 6.7.2009. Respondents have also placed reliance on the judgments of the Hon'ble Supreme Court in the cases of **State of Punjab vs. Gurdev Singh**, (1991) SCC 1; **Ratan Chandra Samanta**, JT 1993 (3) SC 418; **Ex. Captain Harish Uppal vs. UOI**, JT 1994 (3) 126; **Ajay Waliya vs. State of Haryana & Ors**, JT 1997 (6) SC 592, **DCS Negi vs. Union of India and others**;

6. 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.”

7.1 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) Recently 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 Uttaranchal 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.”

7.2 In the light of the above said legal position of the various High Courts and Apex Court and 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's in this case is challenging the Notification of the Govt. of NCT of Delhi dated 6.7.2009, whereby remuneration of Part-Time Vocational Teachers on contract basis were revised qua the qualified teachers as per RRs to Rs.13160/- and qua non-qualified teachers to Rs.11140/-, and the instant OA has been filed on 28.5.2018. Admittedly, the applicant is not having the requisite qualification as per the Recruitment Rules for the post in question. If the applicant is aggrieved by the said notification with regard to grant of remuneration, he ought to have challenged the same at the relevant point of time as the said was a policy decision which was taken by the Govt. of NCT of Delhi with regard to grant of remuneration to the Part-Time Vocational Teachers and at this stage, after a lapse of more than 8 years, this issue cannot be entertained by this Court and also the fact that in the Misc. Application seeking condonation of delay in filing the OA, the applicant has stated reasons, as referred to above, but this Court does not find the same is 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.

8. In the result and for the foregoing reasons, MA 2568/2018 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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