

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

O.A. No.3412 of 2014

This the 16th day of January, 2019

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

R.K. Pandey, aged about 59 years
S/o Sh. Kedar Nath Pandey,
R/o 336, Vikas Kunj, Vikas Puri,
New Delhi-110018.

.....Applicant
(By Advocate : Shri C.S.S. Pillai for Shri T.N. Tripathi)

VERSUS

Union of India

1. Secretary, Govt. of India,
M/o Information & Broadcasting,
Shastri Bhawan, New Delhi-1.
2. Director General,
All India Radio, Parliament Street,
Akashwani Bhawan, New Delhi.
3. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

.....Respondents
(By Advocate : Shri S.M. Arif)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

When this matter is taken up, learned proxy counsel for the applicant submitted that main counsel is not available. Learned counsel for the respondents urges that this matter be disposed of without giving any further as since from the date of admission of this case, he is raising the preliminary

objection with regard to the reliefs asked for by the applicant and there was inordinate delay in asking for the same. It is his contention that the Hon'ble Supreme Court in catena of judgments, including in **D.C.S. Negi v. Union of India & others** (Civil Appeal No.7956 of 2011) decided on 7.3.2011, directed the Courts that before adjudicating any matter on merits, which has been filed without condonation of application and in which an inordinate delay is noted, the issue of delay has to be decided before. This case as per the contention of learned counsel for the respondents is hopelessly barred by delay and laches. Hence, this Court proceeds to adjudicate this case in terms of provisions of Rule 15 of the CAT (Procedure) Rules, 1987 and accordingly, heard learned counsel for the respondents.

2. During the course of hearing, learned counsel for the respondents draws out attention to the relief asked for by the applicant in this OA, which reads as under:-

- “(a) Direct the respondents to regularize the adhoc services rendered by the applicant to the post of JAG from the date of initial ad-hoc appointment i.e. 28.5.01 instead of 5.3.2004.
- “(b) Direct the respondents to consider applicant for pay parity in the cadre of SAG during the year 2006 when applicant became eligible for it.
- “(c) Direct the respondents to promote the applicant to the post of SAG Grade and subsequently pay parity in the scale of HAG be given with all consequential benefits.

- (d) Pass any order order/s which deems fit and proper in view of this Hon'ble Tribunal."

And points out that the applicant is seeking relief against the order which has been passed on 5.3.2004 vide which he along with others was promoted to the post of JAG of IB(E) S with effect from the date the applicant assume the charge of his post at the place he was posted and until further orders, yet he filed this OA after the delay of 10 years and has chosen not to file any application for condonation of delay giving reasons for the delay and as such the present OA is hopelessly barred by delay and laches.

3. This Tribunal is governed by the Administrative Tribunals Act, 1985 and Section 21 of the same deals with the limitation, which reads 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 subsection (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.”

4. 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 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.”

5. 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. In the absence of any such cause having been explained in the OA, this Tribunal has no option except to dismiss this OA on the ground of limitation as the applicant's reliefs are hopelessly barred by limitation as the applicant in this case is seeking the relief of regularization of his service w.e.f. 28.5.2001 instead of 5.3.2004 and the instant OA has been filed in 2014, i.e., after the lapse of more than 10 years. Accordingly, the present OA is dismissed as such. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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