CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.23 of 2014
M.A No.59 of 2014

This the 13th day of February 2019

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

Jia Ram,
S/o Sh. Bandhoo,
Retd. Assistant Station Master,
Northern Railway,
Railway Station Mallawa,
(Moradabad Division)

Residential Address:-
Care B-33-A, Madhu Kunj Gali,
Near Rubber Factory Chowk,
'B; Block, North Gonda,
Delhi-110053.

....Applicant

(None present)

VERSUS

Union of India, through

1. The General Manager,
   Northern Railway,
   Baroda House, New Delhi.

2. The Divisional Railway Manager,
   Northern Railway,
   Moradabad.

.....Respondents

(By Advocate : Shri Shailendra Tiwari)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

Neither the applicant nor his counsel appeared today despite the fact that on previous date of hearing, i.e., 11.12.2018, it has been made clear that no further

opportunity shall be given as this is a case of senior citizen and this case has been repeatedly postponed on the request of proxy counsel for the applicant. As such we proceed to adjudicate this case by invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987. Accordingly, heard learned counsel for the respondents.

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

> "(i) Set-aside and quash the impugned orders dated 14.07.2009, Annexure – A-1, and Appellate Authority's orders dated 27.11.2009, Annexure – A-3a, being badly vitiated as humbly submitted in the foregoing paras;
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> (ii) direct/command the Respondents to treat the intervening period as spent on duty and restore the applicant's pay to the stage/date of compulsory retirement with all consequential benefits of increment, bonus, etc. and make payment of the arrears thereof with interest @18% p.a. from the date of compulsory retirement dated 20.10.2005 till the date of reinstatement;
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> (iii) declare that the intervening period from the date of compulsory retirement to the date of actual reinstatement cannot be treated as 'Dies Non' without given a show-cause notice and without following the procedure as stipulated in the Rules;
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> (iv) any other relief deemed fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant alongwith heavy costs against the Respondents, in the interest of justice."

3. Since there is delay in filing the OA, the applicant has also filed a Misc. Application bearing MA No.59/2014 seeking

condonation of delay of 4 years, 2 months and 4 days in filing the Original Application.

4. In the instant OA, the applicant is seeking directions to set-aside and quash the impugned orders dated 14.07.2009 dated 27.11.2009 passed by the disciplinary and appellate authorities respectively and also sought direction to be given to the Respondents to treat the intervening period as spent on duty and restore the applicant's pay to the stage/date of compulsory retirement with all consequential benefits of increment, bonus, etc. and make payment of the arrears thereof with interest @18% p.a. from the date of compulsory retirement dated 20.10.2005 till the date of reinstatement. The applicant has himself stated in the condonation of delay application that there is a delay of 4 years, 2 months and 4 days in filing the OA.

5. The bare minimum facts of the case are that on 26.2.2005, major penalty chargesheet was issued to the applicant and after conclusion of inquiry, the disciplinary authority imposed the punishment of compulsory retirement upon the applicant vide order dated 20.10.2005 and appeal submitted by the applicant was rejected by the appellate authority vide order dated 25.1.2006. Aggrieved by the said Order, the applicant filed OA 1654/2006 on 2.8.2006 and the said OA was initially dismissed by this Tribunal vide Order

dated 8.1.2008. However, review application filed by the applicant was allowed and the said Order was recalled and the said OA was reheard and this Tribunal vide Order dated 29.4.2009 passed the following orders:-

> "8. To conclude, while we do not find the plea of violation of principles of natural justice on account of non-supply of the joint enquiry report as borne out by facts; the other plea regarding the order of the Appellate Authority being non-speaking and bald is found to be true. Of the two charges held proved against the applicant, the Inquiry Officer's finding regarding the first charge do not stand the test of a 'reasonable person acting reasonably'. The applicant's averment of the Driver in this case being left off with a relatively minor penalty has not been rebutted by the respondents. Even if this by itself does not provide a justification for taking a lenient view, in the present case, it certainly goes towards reinforcing the argument that the action of the respondents must be validated on the touchstone of fairness.
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> Even though it is trite that the quantum of punishment in disciplinary matters has been held to be essentially within the domain of the executive, in certain circumstances judicial interference has been considered justified. In ***B.C. Chaturvedi vs. Union of India*** *(AIR (1996) SC 484)* the Apex Court held : *if the conclusion or finding be such as no reasonable person would have ever reached the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.*
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> In view of the foregoing, the impugned orders imposing the penalty of compulsory retirement from Railway service are quashed and set aside and the matter remitted to the respondents for reconsideration regarding the quantum of punishment. The Respondents are further directed to take necessary action in the matter and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs."

6. Thereafter applicant sent a legal notice on 15.5.2009 and the respondents vide order dated 14.7.2009 awarded the punishment of reduction in pay from the stage of Rs.5250/- to the stage of Rs.4500/- in the scale of Rs.4500-7000 (as per new scale Rs.5200-202000-2800 on pay Rs.11170/-) for a period of two years with cumulative effect and the intervening period from 20.10.2005 to till date i.e. 14.7.2009 will be considered as 'dies-non'. Applicant has filed his appeal on 3.9.2009 and the said appeal rejected by the appellate authority but period of said punishment was reduced to six months without cumulative effect. Aggrieved by the said orders dated 14.7.2009 and 27.10.2009 passed by the disciplinary and appellate authorities, the applicant has filed this OA seeking the reliefs as quoted above and the present OA has been filed on 2.1.2014.

7. In the MA, the applicant has raised the plea that applicant has retired on 31.12.2013 on attaining the age of superannuation and while filling up the settlement/retirement papers, he came to know that the aforesaid period has been in fact treated as 'Dies Non' and his pension and other retirement dues have been calculated on the basis of lesser qualifying service, resulting in lesser payment of the legal entitlement of the applicant and further admitted that apparently the OA has been filed with inordinate delay, which is not attributable to the applicant

and is not malafide nor intentional. However, unconditional apologies are tendered as during this period the applicant lost his elder son and has been under severe stress and strains and above all, the cause of action, according to the applicant, occurs on the date when applicant retired, i.e., 31.12.2013 when he came to know that the 'Dies Non' order are being given effect to and therefore, the present OA has been filed and lastly submitted that in the interest of justice, delay of 4 years two months and four days may be condoned.

8. Counsel for the respondents at the outset raised the preliminary objection of limitation that the instant OA has been filed in 2014 in which the applicant is challenging the orders of 2009 passed by the disciplinary and appellate authority in compliance of the aforesaid directions of this Tribunal and the explanation given in the MA are not cogent to condone such an inordinate delay and the present OA is liable to be dismissed on this ground alone.

8.1 Counsel for the respondents further by referring to the counter affidavit submitted that impugned punishment order has been passed by the respondents in compliance of the aforesaid directions given by this Tribunal in earlier OA preferred by the applicant. The applicant also preferred his appeal, which was sympathetically considered by the appellate authority and the said authority reduced the

punishment period of two years to six months without cumulative effect. The period treated as dies-non would be countered towards the qualifying service will not affect adversely on the amount of his pension as the punishment stands without cumulative effect. After expiry of the punishment, his pay will be restored to the original pay. Further He submitted that so far as the period treated as dies non is concerned, the same will stands as it is in the orders of disciplinary authority and the appellate authority passed his orders with full application of mind. Hence, the intervening period has been treated as 'dies-non' (no work- no pay), the question for payment of wages of this period does not arise.

9. After hearing learned counsel for the applicant 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 –
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> (1) A Tribunal shall not admit an application, -
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> (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;
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> (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."

9.1 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. .....
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> 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.
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> 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 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: -
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> "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."
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> 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: -
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> > "....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."

9.2 In the light of the above said legal position of the various High Courts, 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 applicant 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 directions to set-aside and quash the impugned orders dated 14.07.2009 dated 27.11.2009 passed by the disciplinary and appellate authorities respectively and also sought direction be given to the Respondents to treat the intervening period as spent on duty and restore the applicant's pay to the stage/date of compulsory retirement with all consequential benefits of increment, bonus, etc. and make payment of the arrears thereof with interest @18% p.a.

from the date of compulsory retirement dated 20.10.2005 till the date of reinstatement and the instant OA has been filed on 2.1.2014.

9.3 This Court also finds that in the Misc. Application seeking condonation of delay in filing the OA, the applicant has not given any satisfactory reply for the period from 28.10.2009 till the date of filing of this OA, i.e., 2.1.2014. Admittedly the appeal was rejected vide order dated 27.10.2009, the applicant ought to have approached this Tribunal on or before 26.10.2010 and facts that after 27.10.2009 till the filing of this OA, the applicant has not taken any action in the matter and, therefore, 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.

10. We perused the pleadings in detailed and examined all the pleas taken by the applicant, especially noted that he was served with the orders of 14.9.2009 and 27.11.2009 and he has not stated that he has not received the same at any place and only stated that he came to know at the time of his retirement that it may affect his pension. The respondents in their detailed response have clearly pointed out that the punishment finally meted out to him is only six months without cumulative effect and the appellate authority has

upheld the treatment of intervening period as 'dies non' as nothing has been adverted on the same by the appellate authority. As such from the same it becomes clear that the respondents have complied with earlier directions of this Tribunal passed in OA No.29.4.2009 in OA No.1654/2006 in which it was directed to the respondents to re-examine the case of the applicant on quantum of punishment. Hence, we do not find any deficiency at the level of the respondents.

11. In the result, and for the foregoing reasons, MA 59/2014 is dismissed being devoid of merit and consequently, the OA is also dismissed as barred by limitation as well as on merit. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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