

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

O.A. No.2523/2018
MA No. 2825/2018

This the 13th Day of March 2019

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

Md. Mahboob Alam
Aged about 36 years,
C/o Junaid Ahmad
R/o R-148, Street No. 6
Ramesh Park, Laxmi Nagar,
Delhi-110092
Mob-9971435414
Designation –Assistant Accountant
Group – “C”

....Applicant

(By Advocate : Shri R. Satish Kumar)

VERSUS

RITES
Though its Chairman
SCOPE Minar
Laxmi Nagar,
New Delhi-110092

.....Respondents

(None present)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

None present for the respondents today. We proceed to adjudicate this case by invoking the provisions of Rule 16 of the CAT (Procedure) Rules, 1987 and accordingly heard learned counsel for the applicant on delay condonation application.

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

- (i) to declare the act of Respondent in not complying with terms and conditions mentioned Advertisement Vide VC No. 32/12 for recruitment of Assistant (Account) on regular basis as illegal and arbitrary;
- (ii) to direct the Respondent to consider the case of the Applicant on its merit on the basis of the terms and conditions mentioned Advertisement vide VC No. 32/12; and
- (iii) pass any other order/s as deem fit and proper in the facts and circumstances of the case.

3. Since there was a delay of about five years, the applicant has also filed Misc. Application (MA No.2825/2018) for seeking the condonation of delay of 1529 days in filing the OA in which he stated that he was trying to get required information from the respondent through RTI from the year 2016 but could get the information only on 15.2.2018 and after obtaining the same, he approached to the Delhi High Court Legal Services Committee and the said authority vide order dated 22.3.2018 directed the applicant to approach to the Delhi State Legal Service Commission and on 12.4.2018, the said authority marked this case to the present advocate and the present advocate after collecting the entire documents has filed this OA with the present MA for condonation of delay of 1529 days.

4. On previous date of hearing, counsel for the respondents contested admissibility of this delay of 1529 days

and stated that the selection process for Vacancy Circular No.32 of 2012 was completed in May 2013 and since then another selection process has also been completed in terms of Vacancy Circular No.73/2015 and further submitted that in view of factual position of the case and the decisions of the Hon'ble Supreme Court in a number of matters, the statute of limitation must come into play as due diligence has not been exercised by the applicant in this matter.

5. Today when this matter is taken up, learned counsel for the applicant only submitted that from the information provided to the applicant under RTI Act, it is clear that respondents have not complied with Para 6 (d) of the Advertisement for recruitment of Assistant (Account) on regular basis which resulted in selection of candidates having less marks than the applicant. However, he failed to explain the reasons for the delay from May 2013 to 19.8.2016, as the applicant has not stated what he was doing during this period. However, from 20.8.2016 till 11.3.2018, the applicant was involved in obtaining information under RTI or otherwise from the respondent and ultimately on 12.3.2018, he preferred his representation to the respondent and when no response was received to the same, he has filed this OA.

6. 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 –

- (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. The Apex Court while dealing with this issue of limitation and also on the point of delay condonation passed various judgments 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. In the light of the above said legal position on the subject 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 directions to the respondents to consider his case on its own merit on the basis of terms and conditions mentioned in Advertisement vide Vacancy Circular No.32/12 and the result of the exam conducted for the post advertised by the said circular declared in the year 2013 and the applicant has not taken any action till 19.8.2016 and has himself only explained his activities after over 3 years of the declaration of the result. Further filing RTI does not extend limitation automatically and only on 20.8.2016 till 15.2.2018, he was involved in obtaining information by filing applications under RTI Act and ultimately moved his representation only on 12.3.2018 for redressal of his grievance and when no response has been

received by the applicant, he has filed this OA on 7.5.2018. From the aforesaid factual position, it is evidently clear that applicant was not diligent in pursuing his cause and no satisfactory explanation has been given by the applicant for condonation of delay in filing the OA within the period of limitation. It is also trite law that application(s) moved under RTI Act does not extend the period of limitation.

9. In view of the aforesaid facts and circumstances of the present case, MA 2825/2018 is dismissed being devoid of merit and accordingly, this OA is barred by limitation as the relief sought by the applicant in this OA cannot be granted to him at this belated stage. 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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