CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

Reserved on :01/04/2016
Pronounced on : ~~.04.2014~~ 2.5.2016

OA No.350/01317/2014
OA No. 350/00930/2014

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

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OA No.350/01317/2014

SMT. RIKTA SAHA
V/S
UNION OF INDIA & ORS

OA No. 350/00930/2014

MS. GOURI DAS GUPTA
V/S
UNION OF INDIA & ORS

For the Applicant :Mr.A.Chakraborty & Ms. T. Das, Counsel
For the Respondents : Mr. A P Deb & Ms. J Saha, Counsel

ORDER

MS. JAYA DAS GUPTA, AM

The above TWO cases were heard together. As the question of facts and law involved in these cases are common a common order is passed which would govern all these cases *mutatis mutandis*.

2. Both the OAs have been filed by the Applicants under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

> "(a) An order do issue directing the respondents to grant pension and pensionary benefits treating the applicant as a regular employee with effect from the date of initial appointment;
>
> (b) Costs and incidentals;
>
> (c) Such further order/orders and/or direction/ directions as Your Lordships deem fit and proper. "

2. The case of the applicants, in brief, is that they had worked as Social Worker for about 23/35 years, under the Respondents. The applicant, namely Ms. Rikta Saha **attained the age of 60 years on 31.07.2007** and applicant namely Ms. Gouri Das Gupta **attained the age of 60 years on 30.04.2010**, but till attaining the age of 60 years, both of them were not regularised in service; for which both of them were denied the benefits which were paid to the other regular employees. It has been stated that the recommendations of the 5th and 6th CPC were partly implemented in their favour. The project under which they were appointed had been merged with the core activities of different research unit under the control of the ICMR. It has been stated that some similarly circumstanced employees filed OA Nos. 370/2000 and 303/2001 before the Madras Bench of the Tribunal praying for a direction to the Respondent- Department to regularize their services which was disposed of with certain direction. Against the said order the Respondent-Department filed WPCT before the Hon'ble

High Court of Madras. Ultimately, it is the case of the applicants that the employees who filed the above OAs were regularised from the date of their initial engagement but as the present applicants were not parties to the said OAs, they were not granted the benefit of the regularization. Albeit the employees who filed the OA before the Madras Bench and were regularized, were junior to the applicants. It has been stated that as they are similarly situated as that of the applicants in the OA before the Madras Bench of the Tribunal, they should not be discriminated in the matter of regularization and payment of pensionary benefits. Hence, they have filed these OAs seeking the aforesaid reliefs.

3. Per contra, the Respondents have filed their reply in which it has been stated that as per the direction of the Hon'ble Supreme Court in Uma Devi's case the benefit of regularization cannot be extended to the applicants. They have also placed reliance on a decision of the Principal Bench of the Tribunal in OA No. 659 of 2014 dated 06.02.2015 wherein the Principal Bench of the Tribunal rejected the prayer of the similarly circumstanced persons like the present applicants for regularization. It has been contended by the Respondents that the benefit of regularization was awarded by the Hon'ble High Court of Madras only to the 20 individuals who were parties to the Writ Petition and, as such, the said benefit of regularization cannot be extended beyond those 20 persons, that too,

at this belated stage. For the above reasons, the Respondents have prayed for the dismissal of this OA.

4. The learned counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having heard them at length, we have perused the records.

5. As it reveals the prayer of the applicant are two folds; viz; one is for regularization and thereafter grant of the pensionary benefits to her. According to the applicants, the applicant in OA No. 1317/2014 (Smt. Rikta Saha) attained the age of 60 years on 31.07.2007 and the applicant in OA No. 930 of 2014 (Smt. Gouri Das Gupta) attained the age of 60 years on 30.04.2010 which is the maximum age limit of remaining an individual in Government service. Admittedly OA No. 1317 of 2014 was filed by the applicant on 24.09.2014 and OA No. 930 of 2014 was filed by the applicant on 09.07.2014 i.e. after a period of about seven years and four years of attaining the age of 60 years by the applicants. Section 21 of the Administrative Tribunals Act, 1985 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 sub-section (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."

6. In view of the above and as per the directives of the Hon'ble Apex Court, at the outset, it is expedient to examine the point of limitation, before entering into the merit of the matter. At the cost of repetition, we may state that the applicant retired from the ICMR on 31.7.2007 and this OA has been filed by her seeking regularization, only on 24.09.2014. It is a fact that persons similarly circumstanced working in the units of ICMR namely Dr. Arunangshu Chakraborty & Ors have approached this Tribunal in OA No. 350/01298/2013 and got a favourable orders on 03.02.2016. **All the applicants therein approached this Tribunal while continuing in service seeking their**

regularization whereas <u>it is noted that both the OAs were filed after seven years and four years of attaining the age of 60 years by the applicants, praying for regularization.</u>

7. Our mind is reminiscent and redolent with the decision of the Hon'ble Apex Court in the case of **Chairman, U.P. Jal Nigam & Anr Vs Jaswant Singh & Anr**, reported in (2006) 11 SCC 464 wherein it has been held that the question regarding grant of relief to the persons who were not vigilant and did not wake up to challenge the action of the respondents and accepted the same but filed petitions after the judgements of the Court whether would be entitled to the same relief or not. Thereafter, the Hon'ble Supreme Court held that when a person is not vigilant of his right and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged the alleged illegal action. In the aforesaid case, the Hon'ble Apex Court summarized the Halsbury's Law of England in para 911 which is set out herein below:

> "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:
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> (i) Acquiescence on the claimant's part; and
>
> (ii) Any change of position that has occurred on the defendant's part.
>
> Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been

> completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such case lapse of time and delay are not material. Upon these conditions rests the doctrine of laches."

The Hon'ble Apex Court, after making detailed discussions, in the aforesaid case, have come to the conclusion that the respondents were guilty since the respondents acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. They did not rise to the occasion in time. In such cases, the court should be very slow in granting the relief to the incumbents.

8. Similarly, in the case of **Bhoop Singh vs UOI**, AIR 1992 SC 1414 the Hon'ble Apex Court held that 'It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seek within a reasonable period. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. The impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. The lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason

to not classify him with the other dismissed constables who approached the Court earlier and got reinstatement. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief.'

9. Even in the case of **Union of India & Others Vs M.K.Sarkar,** reported in 2010 (2) SCC 59, the Hon'ble Apex Court while considering the law of limitation went on holding 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 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 the order is passed in compliance with a court's direction.

10. Further in the case of **E.Parmasivan & Others Vs Union of India & Others,** reported in 2002 (5) SLR 307 have rejected the plea of the applicants that limitation will not apply in the case of pay fixation. The observation made in paragraph 2 of the said judgment is relevant which is quoted hereunder:

"The main basis of their case is that in similar cases, OA Nos. 211/86 and 498/86, the principal bench, CAT by judgment rendered on 13.11.1992 directed the Union of India and the officers concerned to treat the applicants therein s entitled to pay fixation in terms of the aforesaid OM. The applicants also cited the judgments of benches of the CAT at a different place wherein relief had been granted to similarly placed officers of the MES cadre. The tribunal by its judgment dated 6.2.1996 dismissed the original application on the ground that it is barred by limitation. The Tribunal rejected the contention raised on behalf of the petitioners that the grievance made by them in the case is continuing and the cause of action for the application is a continuing cause of action, in such a case question of limitation does not stand on the way of the claim made by them. As noted above, all the petitioners had retired from the service long before the judgment of the principal bench, CAT dated 13.11.1992. In the judgments of different benches of CAT, copies of which have been placed on record in the case, the applicants were officers in service. The anomaly in the scale of pay of the petitioners arose as early as on 12.1.1976 when the government of India declined to extend the revised scale of pay in terms of the concordance table to members of the cadres of the store officers and administrative officers. Therefore, the petitioners would have raised objection regarding the anomaly in their scale of pay at that point of time. Even thereafter when they retired from the service they could have made the claim for pay fixation in terms of the concordance table and for calculation of pension on that basis. They did not take any step in that regard till 1995."

11. The Hon'ble Supreme Court in the decision rendered in the case of **State of Uttaranchal & Another Vs Sri Shiv Charan Singh Bhandari & Others** reported in 2014 (2) SLR 688 9SC) held that even if the court or Tribunal directs for consideration of representation relating to a stale claim or dead grievance, it does not give rise to a fresh cause of action. The Hon'ble Supreme Court has dealt with various judgments passed by the Apex Court. The Hon'ble Supreme Court in in paragraphs 17 and 18 as under:

"17. In Bharat Sanchar Nigam Limited Vs Ghanshyam Dass |(2) & Others, 2011 (4) SC 374 = 2012 (4) SLR 711 (SC) a three judge Bench of this Court reiterated the principle sated in Jagdish Lal Vs State of Harayana, 1977 (6) SCC 538 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. Vs Seshachalam, 2007 (10) SCC 137: 2007 (2) SLR 860 (SC) 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."

12. The Hon'ble Supreme Court in the case of **Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy & Others**, 2014 (1) AISLJ 20 have laid down broad principles regarding condonation of delay culled out from various authorities. The Hon'ble Supreme Court in paragraphs 15 have held as under:

"15. From the aforesaid authorities the principles that can broadly be culled out are –

(i) There should be a liberal pragmatic, justice oriented, non pedantic approach while dealing with an application for condonation of delay for the courts are not supposed to legalize injustice but are obliged to remove injustice;

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation;

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but gross negligence on the part of the counsel or litigant is to be taken note of;

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact;

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice;

(vii) The concept of liberal approach has to be encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play;

(viii) There is a distinction between inordinate delay and a delay of short duration or few days for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation;

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach;

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation;

(xi) It is borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation;

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception;

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

13. In both the cases no separate application seeking for condonation of delay, as required under the provision of the Act has been filed by the Applicants.

14. Hence going by the factual matrix of the matter vis-a-vis the provisions of law enunciated by the Hon'ble Apex Court we have no hesitation to hold that the present OAs deserve to be dismissed being hit by the law of limitation as enshrined in Section 21 of the Administrative Tribunals Act, 1985; especially in absence of any separate application seeking to condone the delay. Since the service of the applicants cannot be regularised at this distance date from the date when their service come to an end there cannot be any right of claiming pension also. Accordingly, both the OAs stand dismissed being barred by limitation. There shall be no order as to costs.

However, while parting with these cases, we would like to observe that dismissal of both the OAs on the ground of limitation shall not stand on the way of the Respondents for granting the benefit as has been granted to the applicants before the Madras Bench of the

Tribunal. But this leave given shall not be treated as a direction for regularisation by this Court.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C.Gupta)
Member (Judicial)

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