

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No.382/2017
Dated this the 26th day of June, 2019**

**CORAM: DR.BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)**

Shri Jitendra Verma, Age 28 yrs,
S/o Late Shri Jagdish Verma,
R/o House No.341, Outside Unnao Gate,
Panchwati Colony, Jhansi (UP)-284 002.

... **Applicant.**

(Advocate Shri D.N. Karande)

Versus.

1. Union of India through,
Chairman, Railway Recruitment Board,
(RRB) Mumbai, W. Rly, Divisional
Office Compound, at Mumbai Central,
Mumbai 400 008 (MS).
2. General Manager, Central Railway,
2nd Floor of GM's Office Building,
Mumbai CST-400 001.
3. General Manager, Western Railway,
Churchgate Station,
Mumbai-400020.

... **Respondents.**

(Advocate Shri S. Ravi)

Reserved on : 11.03.2019.

Pronounced on : 26.06.2019.

ORDER

Per : R.N. Singh, Member (J)

The applicant has filed MA No.(Nil) dated 03.05.2017 for condonation of delay of seven years in filing OA. He has filed this application in a very casual manner and he has not even indicated the period of delay which is to be condoned. The applicant has not disclosed even a single ground which can be construed as one which was beyond his control and has prevented him to come to the Tribunal within the period of limitation. There are no good and sufficient reasons to condone the delay. However, as the matter is pending before this Tribunal itself for two years as such, we have also gone into the merits of the OA.

2. This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:-

"(a) That this Hon'ble Tribunal may call for the records pertaining to the Recruitment Procedure, which led to issue the impugned letters under the RTI Act.

(b). This Hon'ble Tribunal may kindly quash and set aside the Final Result published on 28-03-2014 by the RRB, Mumbai.

(c). That the Respondents be directed to appoint the applicant in service as per his merit order in the Waiting List.

(d). This Hon'ble Tribunal may kindly direct the Respondent No.1 to recommend the name of the applicant Central Railway (Res.No.2) for further appointment

retrospectively with all consequential benefits at par with subsequent panels, if any, materialized during this period i.e. year 2014 to till date.

(e). That the Respondents may be directed to grant the applicant the increments and his seniority position, promotion, up-gradation with all consequential benefits at par with juniors appointed in subsequent panels.

(f). Cost of this O.A. May kindly be saddled on the respondents.

(g). Any other relief that this Hon'ble Tribunal deem fit to be granted."

3. The factual matrix of the case are that the Respondent No.1 RRB, Mumbai had notified vacancies of Junior Engineer, Depot Material Superintendent, Chemical and Metallurgical Assistant, Senior Section Engineer and Chief Depot Material Superintendent under CEN 01/2012 published on 10.03.2012 to be filled from Diploma holders and Degree holders. The applicant had applied for Category No.42 i.e. Junior Engineer Electrical/Electrical General/Electrical TRD/Electrical Air Conditioning in response to the said notification no.01/2012 dated 10.03.2012. He appeared in the written test held on 09.09.2012 and secured 288 merit rank. As per the rank secured by the applicant in the written test, he was provisionally qualified to be called for document verification against SC quota only amongst 30% extra candidates over and above the number of SC vacancies.

4. The respondents have filed the Counter Reply disputing and opposing the claim of the applicant in the OA.

5. The learned counsel for the Respondents submits that merely calling a candidate for documents verification does not, in any way, entitle him to an appointment in the Railways. As per letter dated 01.02.2001 for modification of indents Railway Recruitment Control Board is empowered to grant approval of enhancement of more than 50% of notified vacancies before conducting the written examination. Accordingly, Railway Board vide letter dated 03.09.2012 has agreed for enhancement of notified vacancies from 89 to 212 posts after enhancement for the post of Junior Engineer (Electrical), Category No.42 of CEN No.1/2012.

6. The result was declared on 18.02.2014 and the candidates, who were provisionally qualified for document verification equal to the number of vacancies were placed in the main list as per the community and merit. The candidates provisionally eligible against 30% extra candidates called for document verification were placed in separate block with foot note that the additional 30% extra candidates were called as standby candidates and they would be considered community wise

for empanelment from the main list. The Railway Board vide letter dated 05.05.2006 decided to call the candidates up to 20% over and above vacancies for document verification for all Group 'C' posts. As such percentage of 20% has been increased to 30% by Railway Board vide letter dated 25.07.2008. Accordingly, the applicant was provisionally qualified to be called for document verification on the basis of written test held on 09.09.2012.

7. Moreover, it is specifically mentioned in the call letter for document verification of the applicant that "You are called as additional 30% extra candidate as standby and you will be considered for empanelment only if there is shortfall in empanelment in the main list". Therefore, the applicant remained in the waiting list. The currency of the panel is for one year which already expired on 27.03.2015. Hence the 30% extra candidates on the waiting list cannot be considered for appointment as per the extant rules. Therefore, the name of the applicant cannot be recommended for appointment.

8. The applicant has secured 288th merit rank in the written test and the last candidate of SC community recommended for appointment is having the 257 rank in the merit. The provisional 30% extra candidates on the

waiting list for vacancies notified under CEN No.1/2012 cannot be considered for appointment against the vacancies notified under subsequent notification i.e. CEN No.2/2012 dated 20.09.2014 as per the extant rules. The applicant has no right over the vacancies under subsequent notification, therefore no injustice has been caused to the applicant. The merit order of the applicant is 288 and he is at Sl.No.3 in the waiting list of the candidates belonging to SC community. He remained on the waiting list at Sl.No.3 only and the panel got expired on 27.03.2015. No further candidates or any person junior to the applicant out of the waiting list was recommended for appointment. As such applicant has no right to get an offer of appointment merely because of passing of written test.

9. The applicant has also filed Rejoinder reiterating the averments made in the OA.

10. The respondents have filed the Sur-Rejoinder Reply disputing and opposing the claim of the applicant in the OA and reiterating the averments already made in their reply.

11. We have gone through the OA alongwith Annexes A-1 to A-15, Reply and Sur-Rejoinder filed on behalf of the respondents as well as rejoinder filed on behalf of the applicant.

12. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts, circumstances, law points and rival contentions in the case.

Findings

13. The respondents are also well within their competence to consider the case of applicant as per the rules and instructions of the department and by virtue of his name being in the waiting list does not create any statutory right to the applicant. As regards limitation, the present original application is hit by Section 21 of Administrative Tribunals Act, 1985. In the case of Ramesh Chandra Sharma v. Udham Singh Kamal **reported in 2000(2) SLJ SC 89** the Hon'ble Supreme Court has held 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 of 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) xxx xxx xxx

(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. Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the O.A. filed by the first respondent Udham Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under sub-Section (3) of Section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of O.A. on merits. It was, therefore, contended that the Tribunal has totally overlooked the statutory provision contained in Section 21 of the Act and, therefore, impugned order be set aside.

14. The Hon'ble Apex Court particularly in the case of **S.S. Rathore v. State of Madhya Pradesh reported in 1990 SCC (L&S) 50** has observed that successive representations cannot extend the period of limitation. Para 20 and 21 of the said judgments is reproduced herein under : -

"20. 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.**

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Ac. 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."

15. On the point of limitation, the Hon'ble Apex Court has reiterated its earlier view on this matter in the case of **Union of India & Ors. v. A. Durairaj** reported in **JT 2011 (3) SC 254** and held as under:-

Re: Question(i)

13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly for grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage of effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

16. The question of limitation being nullified by filing an OA and getting an order with direction to decide the pending representation was also examined by the Hon'ble Apex Court in the case of **Union of India v. M.K. Sarkar (JT 2009 (15) SC 70: 2010(2) SCC 58)** and

held as follows:-

"The order of the Tribunal allowing the first application of Respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications.

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 reviewing 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.

A Court or Tribunal before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be legal position and effect."

Therefore, in the light of the above discussion, the present OA is liable to be dismissed on the ground of delay and laches. However, we have thought it necessary to consider the claim on merits as well.

17. The Hon'ble Supreme Court in the case of **Bhoop Singh Vs. Union of India [AIR 1992 SC 1414]** held as

follows :-

"It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. Under the Administrative Tribunals Act, 1985, there is a prescribed period of limitation for approaching this Tribunal. In the instant case, the applicants are claiming relief from 1988-1989 onwards by filing the present Original Applications in the year 2011. Such inordinate and unexplained delay/lapse is itself a ground to refuse relief to the applicants irrespective of the merits of their claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the minds of others that he is not interested in claiming that relief."

18. The Hon'ble Supreme Court in **State of Uttaranchal & Another Vs. Sri Shiv Charan Singh Bhandari & others** [2014 (2) SLR 688 (SC)] 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 its various judgments and held in paragraphs 17 and 18 as under :-

17. In Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass (2) & Others [2011 (4) SCC 374 : [2012 (4) SLR 711 SC], a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal Vs. State of Haryana [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."

19. It is well settled by the Judgement of the Hon'ble Supreme Court in the case of **S.S. Rathore Vs.**

Union of India & Others [AIR 1990 SC 10] wherein it has been held that "filing of repeated representations does not make out a case for condoning delay in seeking judicial intervention." It was also held that "casual, lethargic and indifferent attitude of the applicant in approaching this forum after many years cannot be condoned."

20. In view of the above discussion as well as the law settled by the Hon'ble Supreme Court referred to above, we are of the opinion that the appointment is restricted to the terms and conditions and rules on the subject and the same cannot be stretched by the Court(s)/Tribunal(s). This apart, the delay is also a vital factor. Therefore, in the light the discussion above, the applicant has failed to establish a case in his favour. Hence, the OA is liable to be dismissed on

merits and also on the ground of delay and laches. Accordingly, MA filed for condonation of delay is rejected and the OA is dismissed on merit as well as being barred by delay. No order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

ak/-

JD
27/6/19

