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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A.NO.2014/2003
M.A.No.1740/2003**

New Delhi, this the 21st day of January, 2004

**HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)**

S.K.Jana
Chief Controller of Accounts
Ministry of Consumer Affairs, Food &
Public Distribution
Krishi Bhavan (Room No.280)
New Delhi. ... Applicant

(By Advocate: Shri Manoj Chatterjee with Ms. K.Iyer)

Versus

1. Union of Public Service Commission
through its Secretary
Dholpur House, Shahjahan Road
New Delhi - 110 011.
2. Union of India
through the Establishment Officer
Department of Personnel & Training
North Block, New Delhi - 110 001.
3. The Controller General of Accounts
Ministry of Finance
Department of Expenditure
Lok Nayak Bhawan (7th Floor)
Khan Market
New Delhi - 110 003.
4. The Secretary
Ministry of Finance
Department of Expenditure
North Block
New Delhi - 110 001.
5. Shri S.K.Mishra
Ex-Member, UPSC
House No.831, Sector-21A
Faridabad (Haryana).
6. Shri M.J. Joseph
Joint Controller General of Accounts
Ministry of Finance
Department of Expenditure
Lok Nayak Bhawan
(7th Floor), Khan Market
New Delhi - 110 003.
7. Shri S.M. Kumar
Joint Controller General of Accounts
Ministry of Finance
Department of Expenditure
Lok Nayak Bhawan
(7th Floor), Khan Market
New Delhi - 110 003.

8. Shri P.J.Vincent
Joint Secretary & Financial Adviser
Ministry of Finance
North Block (Room No.161 C)
New Delhi - 110 001. ... Respondents

(By Advocate: Shri. M.M.Sudan for Respondents No.2 and 4; Mrs. B. Rana, for Respondent No.1, and None for respondents No.5 to 8.

O R D E R (Oral)

Justice V.S. Aggarwal:-

By virtue of the present application, the applicant, Shri S.K.Jana seeks a direction to the respondents to conduct a review Departmental Promotion Committee meeting and to restore his seniority position as existed in the Junior Administrative Grade above the private respondents No.6, 7 and 8.

2. Some of the relevant facts are that the applicant joined in the Indian Civil Accounts Service as Assistant Controller of Accounts in the Junior Time Scale on 17.12.1979. He was promoted as Deputy Controller of Accounts in the Senior Time Scale of pay on 2.8.1983. On 15.6.1988 he was promoted as Controller of Accounts in the Junior Administrative Grade. He was further promoted in the Selection Grade of Junior Administrative Grade on 1.7.1992.

3. The Departmental Promotion Committee meeting was held at Chennai for promotion to the post of Senior Administrative Grade in which the applicant was to be considered along with others. The applicant and one Shri Jawahar Thakur were ignored. He was only promoted on proforma basis on 30.4.1997.

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4. It is pointed that on 30.8.2001, in OA 2337/97 filed by Jawahar Thakur, this Tribunal had directed that the impugned order should be set aside and respondents should reconsider the applicant's case for restoration of his seniority relative to the private respondents in the light of the decision of the Full Bench of this Tribunal.

5. The applicant requested for holding another DPC meeting as has been done in the case of Jawhar Thakur but his claim has not been re-opened. On these facts the relief in the OA has been claimed.

6. Along with the application, Miscellaneous Application No.1740/2003 has been filed seeking condonation of delay. It has been pleaded that the applicant, as per the original seniority list was holding second position after Jawahar Thakur. The DPC meeting that took place on 21.1.1997 ignored the applicant and Jawahar Thakur. The applicant was unable to immediately raise his objections because during that period he was suffering from Malignant Cancer of Colon since 1994. He had undergone major surgery in February, 1996 in the hospital. He was mentally very disturbed and was advised to remain calm. He was the only bread winner. During the year 1998, he was transferred as Chief Controller of Accounts in the Ministry of Commerce and Industry. He was dealing with sensitive matters and was unable to file the application. In 1998, his left elbow developed an unusual swelling. In 2000 he had undergone another operation. The applicant came to know of the order of Jawhar Thakur only on 8.1.2003

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and thereafter, he had represented. In these circumstances, he prays that the delay may be condoned.

7. The application seeking condonation of delay has been contested. It has been pointed that the cause of action had arisen in 1997 and there is no good ground even for condonation of delay.

8. There was no dispute that the period prescribed for condoning the delay is one year. It would start running from the date the final order is passed. If there is any delay then it has to be explained. There has to be good and sufficient reasons which prevented the person concerned from filing the application in time.

9. In the present case before us, the applicant admits that the DPC was held in January, 1997 and the claim of the applicant was ignored. Within one year of the same, the application was not filed.

10. Now it is being asserted that the applicant was unwell and therefore the delay should be condoned. Taking the assertion of the applicant, it is obvious that he was not unwell before he was ignored in the year 1994. He was operated in the year 1996, whereas the cause of action had arisen in January, 1997. The only plea taken is that in 1998, he was dealing with sensitive matters and he had undergone operation in the year 2000.

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11. Delay has to be explained giving each day's explanation. Herein in the matter before us, the delay is more than six and half years. Otherwise also, the question as to if the applicant was unwell becomes irrelevant because there were temporary ailments. It was not disputed before us that applicant had been attending his official duties during these long years. Therefore, to state that the delay should be condoned on these facts would not be a correct view. Plea on that count must fail.

12. Confronting with that position, the learned counsel argued that another colleague of the applicant, Shri Jawhar Thakur has filed OA No.2337/1997 which was allowed on 30.8.2001 and, therefore, the applicant got a fresh cause of action. We need not delve into this controversy because the answer is provided by the decision of the Supreme Court in the State of Karnataka & Others v. S.M.Kotrayya and Others, (1996) 6 SCC 267. In the said case also the petition had been filed after coming to know similar case that had been granted. The Karnataka Administrative Tribunal had allowed the application. The Supreme Court held that the discretion in condoning the delay has wrongly been exercised. The findings given were:

"Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that

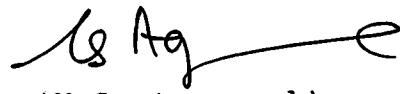
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they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What has required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

13. In para 9 it has been pleaded that the applicant came to know of the decision of this Tribunal in the case of Jawahar Thakur only on 8.1.2003. We need not delve into this aspect. Not only it is difficult for us, keeping in view the Supreme Court's decision in the case of State of Karnataka vs. S.M. Kotrayya and Others (supra) but also it becomes irrelevant because, in any case, it will not help the result.

14. Resultantly, for these reasons MA 1740/2003 seeking condonation of delay is dismissed. Resultantly, OA also must fail and is dismissed. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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