

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
New Delhi**



MA No.3002/2018 in OA No.2686/2018

**Order reserved in MA on 18.11.2019
Order pronounced on 4.12.2019**

**Hon'ble Mrs. Justice Vijay Lakshmi Member(J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

Gargi Gupta, Retired Lecturer (Commercial Arts)
W/o Sh. P.N. Gupta
R/o 19-D, Masjid Moth, DDA Flats
Phase-1, Near Chirag Delhi Flyover
Near Savitri Cinema, Delhi.

Aged around 77 years ...Applicant

(By Advocate: Mr. Sourabh Ahuja)

Vs.

1. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Sachivalaya
I.P. Estate, New Delhi-2.
2. Principal Secretary/Secretary
(Technical Education)
Department of Training & Technical Education
GNCT of Delhi
Muni Maya Ram Marg
Pitam Pura, Delhi-88.
3. Deputy Director (E-I)
Department of Training & Technical Education
GNCT of Delhi
Muni Maya Ram Marg
Pitam Pura, Delhi-88.



4. Director
Department of Training & Technical Education
GNCT of Delhi
Muni Maya Ram Marg
Pitam Pura, Delhi-88.
5. His Excellency Lt. Governor of Delhi
GNCT of Delhi
Raj Niwas, Sham Nath Marg
Delhi. ...Respondents

(By Advocate: Mr. H.D. Sharma)

Order

Justice Mrs. Vijay Lakshmi, M(J)

MA No.3002/2018

This MA has been filed by the applicant seeking condonation of delay in filing the Original Application before this Tribunal. According to the facts as mentioned in para 3 of the MA there is a delay of 338 days in filing the OA before this Tribunal which is neither deliberate nor intentional but due to deteriorating medical conditions of the applicant and her husband, who are around 77 and 79 years old respectively and are facing various age related ailments, such as blood pressure, heart and orthopedic problems. It has been prayed by the applicant that due to poor medical health, the



applicant could not approach the Tribunal within the period prescribed under Section 21 of the Administrative Tribunals Act, 1985. Therefore, the delay of 338 days be condoned.

2. Learned counsel for the applicant has next submitted that the applicant's case in OA is very good on merits. She has sought the relief of grant of senior pay scale of Lecturer and other consequential benefits like arrears of salary and pension, with interest by pre-poning the date. Learned counsel for the applicant has further argued that denial of selection grade/correct pay scale to the applicant by the respondents is causing continuing/recurring harm to the applicant by affecting her pension and pensionary benefits every month, giving her a continuous cause of action. Therefore, even otherwise, the claim of applicant is not barred by limitation or delay and latches.

3. Reliance has been placed on the law laid down by Hon'ble Apex Court in ***State of MP Vs. Yogender Srivastava*** {2010 (10) SCC 538, Para 18} wherein it has been held that:



"where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of latches, as the denial of benefit accrues every month when the salary is paid, thereby giving rise to a fresh cause of action based on continuing wrong."

4. Another case relied upon by the applicant is ***Union of India Vs. Tarsem Singh*** (2008 (8) SCC 648) wherein the Supreme Court has held that:

"where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury."

5. In so far as the merits of O.A. are concerned, learned counsel has submitted that the similarly placed Lecturers were granted selection grade whereas the applicant has been denied the benefit. In this regard, reliance has been placed on the law laid down by the Apex Court in ***State of UP Vs. Arvind Kumar Srivastava*** (2015(1) SCC 347) where the Supreme Court has observed as under:-

"22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated



persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of [Article 14](#) of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."

6. Learned counsel for the applicant has further contended that if the relief claimed by the applicant is granted, it will not have any adverse effect on third parties.

7. On the aforesaid ground, it has been prayed that the delay be condoned and the OA be decided on merits. The submission of learned counsel for the applicant is that if the judgment pronounced by a court is judgment "*in rem*" with intention to give benefit to all similarly situated persons, whether they approached the court or not, the obligation

goes upon the authorities to itself extend the benefit thereof to all similarly situated persons.



8. In so far as the delay in filing the O.A. is concerned, learned counsel for the applicant has submitted that as the judgment in the matter of ***Govt. of NCT of Delhi & Anr. Vs. Mrs. Usha Anand***, in WP(C) Nos.12292-93/2005 which is relevant in the present case was rendered on 04.04.2011 and it came to the knowledge of applicant in the year 2013. As it was a judgment *in rem*, the respondents were duty bound, to extend the benefit thereof to similarly situated persons including the applicant. The applicant was under expectation that her case would also be considered by the department. However, when they failed to extend the benefit to her, she approached this Tribunal. Therefore, the instant OA is not barred by delay and latches.

9. It is lastly submitted by the applicant that in a catena of judgments, the Apex Court has reiterated that when substantial plea and technical plea are fitted against each other, then the courts should decide



the case on merits rather than dismissing the same on technical pleas like limitation etc.

10. On the aforesaid ground it has been prayed that the delay of 338 days, in filing the OA, be condoned by allowing the present MA.

11. On the other hand, learned counsel for the respondents has vehemently opposed the MA. In the counter reply, filed by respondents, it has been stated that the applicant was regularised as a Lecturer by USPC w.e.f. 28.05.1990. She retired on 31.01.2001 and submitted first representation on 15.05.2006 i.e. after a period of five years. She is approaching the Tribunal after 17 years of her retirement. The impugned order shows that she made a representation on 18.09.2015 i.e., after 14 years of her retirement. There is no explanation of delay of these 14 years in making her first representation. Although she has stated that the delay is only of 338 days, but it is an old and stale case, filed with a delay of about 15 to 17 years.



The law does not preclude the Tribunal from lifting the veil and to see the actual delay caused by the applicant. Hence, this O.A. should not be entertained by this Tribunal.

12. Learned counsel for the respondents has placed reliance on the law laid down by the Apex Court in **Bhoop Singh Vs. Union of India**, AIR 1992 SC 1414, wherein it was held that lapse of a long and unexplained period of several years cannot be ignored and a petitioner cannot be permitted to move courts of law at his will.

13. Reliance has also been placed on **Union of India vs. Harnam Singh**, (1993) 2 SCC 162 wherein taking a similar view the Hon'ble Supreme Court has held:

"The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to aid of those who sleep over their rights and allow the period of limitation to expire."

14. It has been next contended that in **Ramesh Chand Sharma vs. Udham Singh Kamal**, (1999) 8 SCC 304, it has been held that OA filed before the



Tribunal after expiry of three years, could not have been admitted and disposed of on merits in view of the statutory provisions contained in Section 21 (1) of the Administrative Tribunals Act., 1985.

15. Respondents have further relied upon the judgment of the Hon'ble High Court of Himachal Pradesh in **R.K. Goel vs. State of H.P.**, 2004 (2) SLR 524 (HP) wherein it has been observed that the legislative purpose of prescribing the limitation period in Section 21 of the Act is to ensure that Tribunals are not burdened with stale, old claims and that all such persons who feel aggrieved, approach Tribunals within a reasonable time and they do not keep sleeping over long years and approach Tribunals to place their old stale claims at their sweet will. Such a legislative objective of the law makers cannot be defeated and frustrated by adopting a strategy whereby, limitation clause of the Act is technically satisfied. Thus, it is possible that even though the dispute has already become old and stale, say by 10 or 15 years, but a representation is made to settle the old dispute of



the vintage of 10 or 15 years and on rejection of such representation by administration, an Original Application has been filed with a claim that the same is within the prescribed limitation period of one year from the rejection letter. The High Court held that the law does not preclude the Tribunal from lifting the veil and going to the substance of the so called final refusal order to find out whether the claim is stale and old and whether the same Original Application suffers from grave unexplained latches.

16. Learned counsel for the respondents has lastly contended that in the present case, the cause of action first arose in the year 2001 when she retired but she chose to keep silent, sleeping over her rights. Hence, it has been prayed that the MA being devoid of merits, be dismissed.

17. We have given our thoughtful consideration to the rival contentions advanced by the learned counsel for both the parties and have carefully gone through the record.



18. The applicant had joined the Department of Training and Technical Education on 17.12.1969 and she was promoted as Lecturer on ad hoc basis w.e.f. 12.12.1988 and regularised as Lecturer on 28.05.1990 by UPSC. Consequent upon her regularisation by UPSC, she was granted senior scale w.e.f. 28.05.1998, i.e., after 8 years of regularisation, which was later revised and pre-poned to 28.05.1996. She retired on 31.01.2001 i.e. before completion of 16 years from the date of initial regularisation, which is the requisite period for grant of selection grade and which was to be completed on 28.05.2006. She retired prior to completion of 8 years from the pre-poned date of grant of senior scale i.e., 28.05.1996. However, the case of the applicant was considered for financial upgradation by the Screening Committee which met on 04.11.2015. The Committee decided not to regularise the ad hoc period of any Lecturer. Consequently she was not found eligible as she had retired before due date of eligibility. The applicant made representations dated 18.09.2015, 24.11.2015 and 22.01.2016 requesting for preponing of the date of senior

scale from 28.05.1996 to 01.01.1996 and grant of selection grade from 01.01.2001 but all were denied by the department.



19. Learned counsel for the applicant has contended that another similarly placed lecturer Mrs. Usha Anand has been granted the benefit of senior scale and selection grade under the orders of Hon'ble High Court passed in the aforesaid WP(C) No.12292-93/2005. Since the case of Mrs. Usha Anand and the applicant were on the same footing, the principle in the High Court's judgment also applies in the case of the applicant by pre-poning the senior scale from 28.05.1996 to 01.01.1996 and she was also entitled for selection grade from 01.01.2001.

20. The copy of the judgment referred by Hon'ble Delhi High Court in aforesaid Usha Anand's case has been annexed as Annexure No.12 to the OA shows that the Hon'ble Delhi High Court has dismissed the Writ filed by the Govt. of NCT of Delhi and confirmed the order of the Tribunal on the ground that the



petitioner(department) had not denied that the respondents (Usha Anand and another) were entitled for counting their service from the date of ad hoc appointment till regularisation in 1990 for the purpose of pension and other retirement benefits, whereas in the present case the respondents have denied the entitlement of the applicant.

21. In so far as the delay is concerned, it is clearly evident that there is a delay of more than seven years in filing this O.A. if not more than 16 or 17 years as alleged by the respondents. When some colleagues of the applicant were granted benefit in Usha Anand's case decided on 04.04.2011, then what was the reason that applicant did not take any action. The applicant has admitted that she only orally requested the department to grant her the same benefits that too in the year 2013. According to her, at that time, she was given assurance by the respondents that her claim will be considered shortly. But she approached

the respondents by means of a representation on 10.04.2015 which was her first representation after the Usha Anand's case.



22. Keeping in view the facts and circumstances of the case we are of the considered view that the applicant has miserably failed to show any good cause for such a long unexplained delay. It is true that now she and her husband have become old and may be suffering from some age related diseases but she has nowhere explained as to what prohibited her in not even making any representation before her department-before 2015 despite the fact that the cause of action arose in 2001, i.e., 18 years ago, when she retired. She continued to sleep over her rights even after passing of the judgment in Usha Anand's case in the year 2011 and made 1st representation in the year 2015.

23. In view of the facts and circumstances, the unexplained delay cannot be condoned. The

M.A. is accordingly rejected. Therefore, the OA stands dismissed being barred by limitation.



(Pradeep Kumar)
Member(A)

(Justice Vijay Lakshmi)
Member(J)

/vb/