

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No.693 of 2008**

% Reserved on: 13<sup>th</sup> March, 2012  
Pronounced on: 30<sup>th</sup> March, 2012

MAHARAJ SINGH . . . Appellant

through : Mr. Soumyajit Pani,  
Advocate.

VERSUS

DIRECTOR OF AIIMS . . . Respondent

through: Mr. Rajat Katyal, Advocate  
with Mr. P. Kedia,  
Advocate.

**CORAM :-**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**A.K. SIKRI (Acting Chief Justice)**

1. The appellant herein had filed W.P.(C) No.17200/2004 claiming that he was entitled to seniority in the cadre of Lower Divisional Clerk (LDC) from the date of his initial appointment in 1989 and consequently he was entitled to promotion at least from the year 1994 when he became eligible for consideration to be promoted as UDC. This relief was claimed on the premise that when he was initially appointed as LDC vide appointment order dated 07.8.1989, the said memorandum clearly stated that it was an appointment to the temporary post of Clerk-cum-Record Keeper, *albeit*, in Dr. Rajendra Prasad Centre for

Ophthalmic Sciences, All India Institute of Medical Sciences (hereinafter referred to as 'AIIMS'). The terms and conditions stipulated in this memorandum mentions that the said temporary post was likely to continue and in the event of its becoming permanent, claim for permanent absorption of the appellant would be considered. It also states that other conditions of service such as benefits of pension, GPF and leave, etc. would be the same as provided for in the regulation in AIIMS. It was also contended that the appellant was appointed through Employment Exchange. Therefore, he was to be considered as a regular appointee with effect from initial date of appointment, i.e., 07.8.1989. The appellant had also alleged discrimination on the ground that when other similarly situated persons had been regularized and given the benefit of seniority from the initial date of appointment, it could not have been denied to the appellant.

2. As per this, the claim of the appellant was refuted by the AIIMS on the ground that the appellant was initially appointed on project; his appointment was not on regular basis; he was subsequently absorbed in the Institute in the year 2001 and on this basis, he was promoted as Upper Divisional Clerk (UDC) in the year 2002. The respondent had also taken the plea that the writ petition filed by the appellant suffered from laches and delay as he could not come forward for ten years and claimed retrospective seniority and antedated promotion.
3. The respondent had also submitted that there was no arbitrariness or discrimination and the case cited by the appellant was sought to be distinguished.

4. The learned Single Judge after hearing the parties dismissed the writ petition vide order dated 26.10.2005 primarily on the ground that the appellant had approached the Court belatedly and that too only he was given promotion in the year 2002. In the opinion of the learned Single Judge, the appellant should have claimed the relief immediately after 1994, but he waited for 11 years before coming to the Court. Even on merits, learned Single Judge took the view that the appellant could not show any rule or regulation as to how he had right to be promoted from retrospective date. Insofar as the case of Shri S.K. Sharma cited by the appellant to allege discrimination is concerned, the learned Single Judge observed the Shri Sharma was not granted promotion, but upgraded under Assured Career Progression after fulfilling the requisite qualification of 12 years service. Resultantly, the writ petition was dismissed.
5. The appellant challenged that order of the learned Single Judge by preferring LPA No.971/2006. In this appeal, the appellant relied on certain documents which were produced for the first time along with the appeal. The Division Bench passed orders dated 05.7.2006 stating that it could not permit to the appellant to rely on these documents for assailing the impugned judgment, it would be open to the appellant to approach the learned Single Judge to seek review of the order on the basis of those documents. Thereafter, the appellant filed review petition. In this review petition, the appellant annexed copies of various representations on the basis of which it was argued that he was making representations and therefore, his writ petition could not be dismissed on the

ground of delay. He also relied upon few more instances where absorption was sought to be given effect from initial date of appointment to certain persons. The appellant, however, could not persuade the learned Single Judge to review the judgment and the review petition has been dismissed vide order dated 05.9.2008 in the following manner:

"The Court has considered the documents. No doubt they revealed that the petitioner did represent on several occasions to the respondents on the question of date of absorption and consequential seniority. **The petitioner is undoubtedly right that at one point of time his representation was favourably recommended by one Dr. Bir Singh on 6<sup>th</sup> November, 1997.** However, that was not acceded to and the petitioner continued to represent to the authorities.

The material placed on record in the opinion of the Court and insufficient for a review of the judgment rendered previously. It is settled law that repeated representations do not extend the period of limitation as is clear from the judgment reported as S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10. So far as the grant of seniority in other instances is concerned, the Court is of the opinion that parity cannot be claimed against those cases as the terms and conditions of initial appointment of such persons would have to be looked into. There is no such material on the record, to enable the petitioner to claim parity with them. Moreover, the Court is of the opinion that if the issue were permitted to be re-agitated and the petitioner's request acceded to, almost 14 years later, the settled position of seniority would be re-opened and the AIIMS would have to face demands of several others who have might have accepted the date of absorption on the basis of the later order of 2001." (emphasis supplied)

6. It is in these circumstances, the appellant has filed the present intra-court appeal once again this time challenging the order of passed in the review petition. It is clear from the above that the writ petition as well as the review petition were dismissed

on the ground of the delay and also on the ground that no discretion could be proved by the appellant.

7. As far as delay is concerned, the learned counsel for the appellant has repeated the submission which was raised before the learned Single Judge, viz., he had been making various representations. However, one of the view taken by the learned Single Judge was that mere filing of representation is no ground to justify approaching the Court belatedly. The cause of action has arisen in the year 1994. Of course, initially it was proper to make representation. Facts coming on record only show that initially the representation was favourably recommended by one Dr. Bir Singh. However, that was only a recommendation of his superior officer which was considered by the Competent Authority, but was not acceded to. The appellant should have approached the Court immediately thereafter and therefore, he should not have kept on making representations. The petitioner was treated as project employee and was absorbed in the regular establishment in the year 2001. Even at that time, the appellant did not approach the Court with a prayer that his absorption should have been from earlier date. Not only this, he waited till he was given promotion in the year 2002 on the basis of absorption in 2001 and approached the Court only in the year 2004. It is rightly pointed out by the learned Single Judge that in the matter of seniority and promotion, one cannot take the things easy and approach the Court belatedly as it is not wise to entail the settled position of seniority, etc.

8. As already pointed out above, this appeal is against the orders passed in review petition. The scope of review jurisdiction is very limited and the learned Single Judge has passed the order being conscious of the parameters of review jurisdiction. The learned Counsel for the appellant could not point out any infirmity in the exercise of such jurisdiction
9. Finding no merit in this appeal, the same is dismissed.

**ACTING CHIEF JUSTICE**

**(RAJIV SAHAI ENDLAW)  
JUDGE**

**MARCH 30, 2012**

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