

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1794/2015 & CM APPL. No. 3194/2015 (Exemption)**
R.K. SAXENA Petitioner
Through **Mr. Shreya Mukherjee & Mr. Jeet**
Ram Dhangar, Advocates

versus

UNION OF INDIA AND ORS. Respondents
Through **Mr. Anil Grover & Ms. Divya Jain,**
Advocates for R-2 to R-4

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **24.02.2015**

KAILASH GAMBHIR, J. (ORAL)

CM APPL. No. 3194/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P.(C) 1794/2015

Challenge in the present Writ Petition filed under Article 226 of the Constitution of India is the impugned order dated 13.11.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'CAT'*) thereby dismissing the O.A. No.4290/2013 preferred by the petitioner and to the order in review dated 05.01.2015 dismissing the R.A. No.228/2014.

Assailing the said order, Mr. Shreya Mukherjee, the learned

counsel for the petitioner submits that the petitioner had joined the Sports Authority of India (*hereinafter referred to as the 'SAI'*) as Assistant on deputation from the Institute for the Physically Handicapped, New Delhi (*in short 'IPH'*) in the pre-revised scale of Rs.1400-2300 and later, the petitioner was promoted in his parent Department to the post of Assistant in the pay scale of Rs. 1400-2600 and this pay scale was later revised on the recommendation of the 4th Central Pay Commission (*in short '4th CPC'*) to Rs.1640-2900.

The learned counsel submits that the grievance of the petitioner has throughout been that on revision of his pay scale to Rs.1640-2900, which is the applicable scale for the post of Office Superintendent, the petitioner was not given the benefit of promotion but only the benefit was extended in pay scale. It is also the case of the petitioner that three other officers S/Shri S.C. Arora, K.S. Raju and Dharambir Singh were also on deputation and absorbed in SAI and were given the benefit of promotion after taking into consideration the promoted pay scale of Rs.1640-2900.

The learned counsel also submits that this denial of benefit of equivalent post and length of service in the said scale of Rs.1640-2900 w.e.f. 23.12.1986 also deprived the petitioner of his entitlement for promotion to the post of Assistant Director in the year 1991 alongwith other in DPC held in that year, which the petitioner got in the year 1992

upon clearing the Limited Departmental Competitive Examination (*in short 'LDE'*). The learned counsel thus submits that by denial of promotion as Assistant Director in the year 1991 on the basis of his length of service in the pay scale of Rs.1640-2900, the petitioner was superseded by number of persons and consequently, the petitioner got promoted in May, 2014 to the post of Deputy Director instead of January, 2009. The learned counsel further submits that successive representations and reminders were sent by the petitioner to the respondents- SAI and when no decision was taken by the respondents, the petitioner had filed an Original Application (*in short 'OA'*) No. 2017/2013 wherein the learned CAT gave the direction to the respondents vide order dated 11.06.2013 to dispose of the representations of the petitioner within a period of four weeks and pass a reasoned speaking order in respect of all the issues raised in the representations.

The learned counsel further submits that for the first time the respondents had passed a speaking order dated 14.10.2013 wherein, they rejected the claim of the petitioner without disclosing any cogent reasons. The petitioner had filed a fresh OA No.4290/2013 to challenge the said speaking order dated 14.10.2013. The learned counsel further submits that the learned CAT also failed to grant any relief to the petitioner even after taking a view that on the ground of parity the petitioner deserves to

be treated at par with the other three officers S/Shri S.C. Arora, K.S. Raju and Dharambir Singh. He submits that the learned CAT erred in denying the relief to the petitioner on the ground of delayed action taking view that if the same is granted it would upset the seniority list of Assistant Directors and Deputy Directors, which may resultantly unsettle long standing position of several such appointees.

The learned counsel further submits that in an identical case of Mr. Praveen Suri, wherein also the respondents had redrawn the seniority list of Assistant Directors from the year 1991, the respondents have not raised any such objection of delay. To the contrary, in the present case the respondent raised the objection of delay to deny the legitimate claim of the respondent of benefit of length of service and the equivalent post without seeking any change in the pay scale.

We have heard learned counsel for the petitioner at considerable length and given our thoughtful consideration to the arguments advanced by him.

During the course of the arguments, the learned counsel for the petitioner has not denied the fact that the petitioner never made any representation prior to 13.04.2007 claiming seniority in the cadre of Office Superintendent w.e.f. 23.12.1986 based on his pay scale of Rs. 1640-2900. Similarly, the petitioner never raised any grievance for not

being considered for promotion to the post of Assistant Director in the year 1991 on the basis of his length of service in the pay scale of Rs. 1640-2900 when as per the petitioner himself, he got superseded by a number of other persons. It is thus, undeniable fact that there was inordinate delay and laches on the part of the petitioner in seeking his legal remedy. It is a fairly settled law that the law assists those who are vigilant with their rights, and not those who sleep over their rights. In the matter of *M/s Dehri Rohtas Light Railway Company Ltd. V. District Board, Bhojpur and Ors. (1992) 2 SCC 598* the Hon'ble Supreme Court explained the legal position in relation to delay as under:

“The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay.”

In the light of the aforesaid facts and the legal position stated above, we find no fault in the reasoning given by the learned CAT. The Learned CAT is right in holding that entertaining the claim of the petitioner/ applicant in this case would upset the seniority list of Assistant Directors and Deputy Directors and may therefore unsettle long standing position of several such appointees. The operative para of the order

passed by the learned CAT is reproduced as under:

“In our opinion the cause of action, in so far as the applicant is concerned, arose on 13.07.2001 when applicant’s parent department retrospectively revised the pay scale of the post which the applicant was holding before proceeding on deputation. However, the applicant did not raise any claim till 13.04.2007 when he first made a representation asking for benefits similar to those granted to Shri K.S. Raju, Shri S.C. Arora and Shri Dharambir Singh. Thereafter, again he kept quiet and made the next representation only on 13.03.2013. He did approach this Tribunal earlier by means of OA No.2017/2013 in which directions were given to the respondents to dispose of his representations. However, this in our opinion does not change the period of limitation as the same must be counted from 13.07.2001, i.e., the date on which the cause of action arose. Thus, there has been considerable delay in the said case. The applicant has not even filed any application for condonation of delay. Even then to render substantive justice, we would have been inclined to consider the case of the applicant sympathetically by condoning the delay. However, we find that in this case entertaining the claim of the applicant would upset the seniority list of Assistant Directors and Dy. Directors and may, therefore, unsettle longstanding position of several such appointees. Moreover, none of them has even been impleaded as a party in this case. As per his own prayer, the applicant has sought benefit with effect from the date of the promotion with his immediate junior Shri Arun Rishi even he has not been impleaded as a party, even though, he is likely to be adversely affected in case the claim of the applicant is granted.”

It is a settled legal position that a decision is an authority for what it actually decides and not what logical flows from the observations made in the judgment. The words of Lord Denning in the matter of applying precedents, in ***Union of India vs. Amrit Lal Manchanda and Anr., (2004) 3 SCC 75***, which have become locus classicus:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding

such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

We may also refer to the decision of the Hon’ble Supreme Court in ***Re special reference No. 1 of 2012***, wherein it was held as follows:

Each case entails a different set of facts and a decision is a precedent on its own facts; not everything said by a Judge while giving a judgment can be ascribed precedential value. The essence of a decision that binds the parties to the case is the principle upon which the case is decided and for this reason, it is important to analyse a decision and cull out from it, the ratio decidendi. In the matter of applying precedents, the erudite Justice Benjamin Cardozo in “The Nature of a Judicial Process”, had said that “if the judge is to pronounce it wisely, some principles of selection there must be to guide him along all potential judgments that compete for recognition” and “almost invariably his first step is to examine and compare them;” “it is a process of search, comparison and little more” and ought not to be akin to matching “the colors of the case at hand against the colors of many sample cases” because in that case “the man who had the best card index of the cases would also be the wisest judge”. Warning against comparing precedents with matching colours of one case with another, he summarized the process, in case the colours don’t match, in the following wise words:- “It is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the judge begins. He must then fashion law for the litigants before him. In fashioning it for them, he will be fashioning it for others. The classic statement is Bacon’s: “For many times, the things deduced to judgment may be meum and tuum, when the reason and consequence thereof may trench to point of estate. The sentence of today will make the right and wrong of tomorrow.”

In the present case, the Judgment of the Hon’ble Supreme Court cited by the learned counsel for the petitioner would not be of any help, as here the petitioner is claiming promotion to the post of Office

Superintendent from the year 1986 and then to the post of Assistant Director in the year 1991 and then corresponding change in the year of his promotion to the next higher post of Deputy Director, which if allowed would certainly upset the entire seniority list of even those officers who are no more in service and were also not before the learned CAT. The petitioner had also not filed any application to seek condonation of delay and therefore, also the application filed by the petitioner was hopelessly barred by under Section 21 of the Central Administrative Tribunal Act.

There is no merit in the present petition and the same is hereby dismissed.

KAILASH GAMBHIR, J.

I.S.MEHTA, J.

FEBRUARY 24, 2015

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