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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8479/2015**

% ***Judgment dated 4th September, 2015***

V.P. GUPTA

..... Petitioner

Through : Mr. E.J. Varghese, Advocate

versus

UNION OF INDIA & OTHERS

..... Respondents

Through : Mr. Sushil Kumar Pandey, Advocate for
respondents no.1 and 2.

Mr. Naresh Kaushik with Ms. Megha
Singh, Advocates for respondent o.3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Challenge to this writ petition is to the Order dated 22.1.2015 passed by Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*').
2. Denial of Pay Scale of Rs.4500-150-5700 in the Selection Grade of the Joint Controller Post held by the petitioner for pay fixation led to the filing of an OA in the year 2015, which has been dismissed. The Central Administrative Tribunal (hereinafter referred to as '*CAT*') has dismissed the OA on the ground that the same is barred by delay and laches. The grounds urged before the CAT have been urged before this Court as well.
3. The necessary facts to be noticed, as stated in the writ petition, are that the petitioner was appointed as a Apprentice Account in the Defence Account Department in June, 1958. On his clearing the SAS Part-II Examination in October, 1960, the petitioner was appointed as an Accountant in the year 1962. In 1973, the petitioner was promoted as Accounts officer after he cleared ICWA Examination. The petitioner, thereafter was appointed as an

IDAS officer(ACDA) along with his batchmates in the year 1977. His seniority was fixed just below to direct recruits of the IDAS 1977 batch and the senior-most among all SAS Apprentices of his batch in IDAS cadre. The petitioner also cleared ICSI Examination in 1978 and was posted as Assistant Director Training in National Institute of Management Accountant in Meerut in the year 1978-1982.

4. It is the case of the petitioner that in 1990, the petitioner was due for promotion in the Selection Grade of JAG in the Pay Scale of Rs.4500-150-5700. The petitioner retired from service in 1991. Admittedly, the first representation was made by the petitioner in 2013 and thereafter, in the year 2014 a second representation was made. The petitioner approached the Tribunal in January, 2015.
5. Learned counsel for the petitioner has placed reliance on the judgment of this Court in the case of **Pooran Singh v. Union of India & Ors.**, reported at 2013(4) SCT 70, more particularly Para 8. Counsel has further placed reliance in the case of **Sardara Singh v. Union of India**, reported at 1992(6) SLR Para 4 and the judgment of the Supreme Court of India in the case of **S.R. Bhanrale v. Union of India & Ors.**, 1997(1) All India SLJ Page 14 in support of his submission that the delay was on account of respondents who were to allow the legitimate claim of the petitioner and the petitioner cannot be made to suffer on account of the lapse on the part of the respondents. It has also been urged before us that a fresh cause of action would arise in view of the petitioner once his representation was rejected in the year 2014.
6. We find no infirmity in the reasoning and the order passed by the CAT. The judgments sought to be pressed are not applicable to the facts of the present case. The law is well-settled as in the case of **S.S. Rathore v. State of Madhya Pradesh**, JT 1989 Volume 3 Page 530, more particularly

Paragraphs 53 and 54, it has been held by the Supreme Court of India that the cause of action shall not arise from the date when a statutory remedy is provided and a representation shall not be taken into consideration in the matter of fixing limitation. Similar view was expressed in the case of *Union of India & Ors. v. Tarsem Singh*, 2008 (8) SCC 648. Para 5 of the judgment reads as under:

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. 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. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

(emphasis supplied)”

7. Further in the case of *D.C.S. Negi v. UOI & Ors.* in SLP (C) No.7956/2011 decided on 7.3.2011 it has been held as under:

“Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under

the Act have been entertaining and deciding the applications filed under section 19 of the Act in complete disregard of the mandate of Section 21.....”

8. The Apex Court has further held as under:

“A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-Section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation,. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).

In the present case, the Tribunal entertained and decided the application without even advertent to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non applicant is not at all relevant.”

(emphasis supplied)

9. In the case of **Brijesh Kumar & Ors. Vs. State of Haryana & Ors.**, reported at AIR 2014 SC 1612, the Apex Court has held as under:

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the

delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

13. In State of Karnataka & Ors. v. S.M. Kotrayya & Ors., (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

14. Same view has been reiterated by this Court in Jagdish Lal & Ors. v. State of Haryana & Ors., AIR 1997 SC 2366, observing as under:—

“Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios...Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

10. Applying the settled law to the facts of the present case, we may notice that in the present case the petitioner retired from the service in the year 1991. The first representation was made by the petitioner in the year 2013. Grievance of the petitioner relates to a claim, which is more than 27 years

old and in fact the stand taken by respondents before the Tribunal was that the record is not available.

11. We find no infirmity in the impugned order passed by the Tribunal. No grounds are made out to interfere in the impugned order. The writ petition is dismissed in above terms.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 04, 2015

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