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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
% W.P. (C) 8758/2015

Judgment dated 23.09.2015

S. NAGBHUSANAMPetitioner
Through : Mr. S. Sasi Bhusan, Advocate

Versus

UNION OF INDIA AND ORS. ...Respondents
Through : Mr. Amit Anand, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The present writ petition filed under Article 226/227 of the Constitution of India challenges the correctness of the order dated 25.02.2015 passed by the Central Administrative Tribunal (for short 'the tribunal') Principal Bench, New Delhi in O.A. No. 4138/2012, whereby the learned Tribunal dismissed the said O.A. filed by the petitioner.
2. The facts which are imperative to be stated are that the petitioner joined Armed Forces Headquarters (AFHQ) Clerical Services as Lower Division Clerk on 01.04.1999. The Staff Selection Commission (hereinafter SSC), New Delhi vide letter dated 3rd/4th July 2003 advertised for Upper Division Grade Limited Departmental Competitive Examination 2003 (hereinafter UD Grade LDCE 2003) for the eligible Lower Division Clerks in the

Ministries/Depts. Of Central Secretariat Clerical Service, the Central Vigilance Commission, Department of Tourism, Railway Recruitment Board Clerical Service, AFHQ Clerical Service and Election Commission of India including those on deputation to other offices or officiating in Higher Grades.

3. As the facts are further uncurtained that the UD Grade LDCE 2003 was conducted by the respondents in Part I and Part II for making selection. The written examination carrying maximum marks of 300 was planned as Part-I of the examination. The evaluation of record of service of such candidates, minimum standard in the written examination Part-I as evaluated by the SSC, Part II of the examination was planned carrying a maximum of 100 marks. The petitioner appeared in the examination. Subsequently, he found that the DoP&T in Para 3 of the OM dated 08.02.2002 had prescribed revised guidelines for evaluation of service records/ACR.
4. Mr. S. Sasi Bhusan, learned counsel appearing on behalf of the petitioner submits that the petitioner had appeared in the above noted examination and qualified in the written examination at merit serial No.25. The counsel further submits that in 2002 much before the publication of the advertisement of Department of Personnel and training, Respondent No.1 issued an Office Memorandum dated 08.02.2002 wherein it had stipulated sole criteria of promotion as selection only. It is further submitted that in LDCE 2003 the respondents followed provisions of the procedure for evaluation of ACRs which existed before the promulgation of revised guideless vide DOPT OM dated

08.02.2002 which provides for only those officers who obtained the said bench-mark were to be promoted in the order of merit as per grading obtained. Thus where an officer was graded as outstanding superseded an officer graded as very good and an officer graded as very good superseded an officer graded as good. Officers obtaining the same grading were arranged in the select panel in the order of their seniority in the lower grade and those getting a grading lower than the prescribed benchmark (Good) were not empanelled for promotion as per the submissions on behalf of the petitioner. It is submitted that the petitioner made a representation to respondent No.2 on 15.04.2004 for clarification on why the procedure prescribed in OM dated 08.02.2002 was not followed in evaluating ACRs while drawing the final result of the LDCE 2003.

5. With regard to the delay in approaching the Tribunal the counsel for the petitioner submits that the petitioner took so much time for approaching the Tribunal in order to obtain copies of vital documents related to the examination viz. vacancy of UDCs projected by Ministry of Defence to SSC for filling up the vacancies through UD Grade LDCE 2003, ACRs and list of candidates qualified in written examination AFHQ Service etc to substantiate the petitioner's cause and for comprehensive documentation and considerable deliberations. It is further submitted by the learned counsel for the petitioner that all the documents aforementioned which were erstwhile denied to the petitioner on verbal liaison by the respondents citing confidentiality

of the documents, could only be procured after 2005, only on the implementation of RTI Act.

6. To substantiate his arguments learned counsel appearing on behalf of the petitioner relied on ***Ashok Kumar Verma Vs. The New India Assurance Co. Ltd 2013 IXAD (Delhi) 620*** wherein this Court observed as under :

“In my opinion, the principle of limitation or the sister principle of delay and laches will apply if there is clarity of facts for the cause of action to arise in favour of a person to file a case. Unless there is a clarity of facts by stating that which are the heads of recovery and which are substantiated by which detailed facts and documents surely how can the law expect the petitioner to file a case to claim by saying that recoveries are being illegally made. Admittedly, the letter dated 8.9.2010 of the respondent shows that it is the respondent which itself states that no papers could be traced and no details can be given. If that be so, how petitioner can in any manner be prejudiced by invoking doctrine of delay and laches. I may state that the Supreme Court in the case of State of Jharkhand & Ors. Vs Jitendra Kumar Srivastava & Anr. in Civil Appeal No. 6770/2013 decided on 14.8.2013 has held that the terminal benefits which are payable to an employee are not a bounty, but are natural consequential rights on account of services being rendered by the employee. The Supreme Court has held that unless there is a specific rule, terminal benefits cannot be withheld because such withholding would be violative of Article 300A of the Constitution of India. It is required to put on record that in the counter-affidavit filed by the respondent, no rule of the respondent-organization is referred which entitles the respondent-organization to withhold the terminal benefits to the petitioner...”

7. Per Contra, Mr. Amit Anand, learned Counsel appearing on behalf of the respondents submits that the claim of the petitioner is barred by Limitation as the notice for the UD Grade LDCE 2003 was issued on 03.07.2003 and the date of the examination was 19.10.2003, the final results of the selected candidates were published in February, 2004. The counsel for the respondents further clarified that as per the Scheme of the Examination, Selection of candidates was supposed to be made after they qualify in the written examination, in the present case the petitioner failed the minimum standards to qualify the written examination, which he himself admitted in his O.A.
8. Counsel for the respondents further submits that the petitioner filed the aforementioned O.A. aggrieved by his non selection in the said examination belatedly after 9 years of publication of final results and therefore the claim of the petitioner is hopelessly barred by limitation. It is further submitted by the counsel for the respondents that the O.A. of the petitioner has been dismissed by the learned Tribunal the present writ petition is also liable to be rejected.
9. We have heard the learned counsel for the parties and considered their rival submissions. We have also carefully perused the impugned order passed by the Central Administrative Tribunal. The case of the petitioner was forwarded by the Ministry of Defence to the respondent no. 2 (DOP&T) and later on the department after examining the matter clarified the following vide letter dated 24.05.2004 :

“We may clarify that the provisions of OM dated 08.02.2002 are applicable only in the cases of normal promotion, where the assessment for fitness is made by the DPC only on the basis of ACRs. It has no applicability, where promotion is through a limited departmental competitive examination. The preparation of select panel in such cases has to be strictly in accordance with the scheme of the examination.”

10. At the outset, before delving into the merits of the submissions made by the counsel for the parties, the relevant statutory provision requires to be noticed. Section 21 of the Administrative Tribunal Act, 1985 which is relevant for the disposal of this petition is reproduced as under:

21. Limitation -

- (1) A Tribunal shall not admit an application, -*
(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
(2) Notwithstanding anything contained in sub-section (1), where –
(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority

of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

11. The attention of this court has been drawn to ***SLP (C) No. 7956/2011 D.C.S. Negi Vs. Union of India & Ors.*** decided on March 07, 2011, the Supreme Court made pertinent observation regarding Section 21 of the Administrative Tribunals Act, 1985 wherein it was held that the Administrative Tribunal is duty bound to first consider whether the application is within limitation and further that the application can be admitted only if it is found to be within limitation or for any justified reason for extending the period of limitation.
12. With regard to the plea of limitation, the Hon'ble Supreme Court in ***State of Orissa & Anr. vs. Mamata Mohanty 2011 3 SCC 436*** discussed the limitation and observed as under:

“53. Needless to say that Limitation Act 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.”

13. After perusing the above case laws, we are of the considered view that the principles indicated above would give a clear indication that the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not.
14. Normally, in the cases of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind

by the Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950. In an appropriate case the Courts may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.

15. In the instant case, we are of this considered view that there has been inordinate delay and laches in moving the Tribunal for redress against the order dated 14.06.2004 in relation to DOP&T OM dated 08.02.2002. No plausible explanation has been given for the inordinate delay that has taken place in filing the O.A. before the Tribunal. Neither coherent explanation nor sufficient cause is shown by the petitioner for inordinate delay of nearly 9 years in filing the O.A. which clearly indicates that the instant petition is grossly barred by limitation and on the ground of unexplained delay, laches and negligence of the petitioner the writ petition stands dismissed.
16. Additionally, we may notice that the petitioner had not cleared the written examination and thus he would be ineligible. We may also notice that another ground which would disentitle the petitioner for the relief so claimed is that he cannot be permitted to challenge the examination process after participating in the same as held in the case of *Dhananjay Malik & Ors. Vs. State of Uttaranchal & Ors. reported in (2008) 4 SCC 171* as also in the case of *Babita Pathak & Ors. Vs. High Court of Delhi & Ors.* passed by a Division Bench of this Court in W. P. (C) No. 997/2011.

17. For the reasons stated hereinabove, we do not find any infirmity in the order of the Tribunal impugned before us and accordingly, the present writ petition being devoid of any merit is dismissed. No order as to costs.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

SEPTEMBER 23, 2015/sc