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

+ W.P.(C) 9824/2015

% ***Judgment dated 18th November, 2015***

D.N. CHAUDHARY Petitioner
Through : Mr.Harpreet Singh, Adv.

versus

UNION OF INDIA & ORS Respondents
Through : Mr.Arun Bhardwaj, CGSC, and Mr.Rishi
Kapoor, Adv. for respondent no.1.
Mr.Rajesh Gogna, CGSC, and
Ms.Bhavna Bajaj, Adv. for respondents
no.2 and 3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the Order dated 3.8.2015 passed by Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*') by which the O.A. filed by the petitioner has been dismissed.
2. Learned Counsel for the respondents have entered appearance on an advance copy.
3. The necessary facts to be noticed for disposal of this petition are that the petitioner was initially appointed as a Sub-Inspector in the Central Bureau of Investigation on 15.12.1968. Thereafter in the year 1974 he was promoted as an Inspector and in the year 1984 as a Deputy Superintendent of Police. The respondent framed the Recruitment Rules for the post of Superintendent of Police in the year 1996 and thereafter issued a seniority list.

4. As per the petitioner, in the year 2000 an OA was filed by one Sh.N.N. Singh and three others, which was allowed, and promotion order with respect to 25 Deputy Superintendents of Police was issued in the year 2001. In the year 2002, the respondents issued a promotion order for the post of SSP in respect of the petitioner herein. In the meanwhile, one, Sh.R.S. Dwivedi, and three others, who were promoted from the grade of Deputy Superintendent of Police to the grade of Superintendent of Police in the pay scale of Rs.12000-375-16500/- vide order No.288/2001 dated 9.3.2001, filed OA No.2913/2002 seeking a direction to the respondents to grant them the pay scale of Rs.14300-18300/-. Vide order No.288/2001 dated 9.3.2001, out of the 25 officers promoted to the grade of Superintendent of Police, 12 officers were granted pay scale of Rs.14300-18300, and 13 officers were granted pay scale of Rs.12000-16500/-. The applicants in O.A.No.2913/2012 were four out of the thirteen officers, who were promoted in the grade of Superintendent of Police in the pay scale of Rs.12000-16500/-. The Tribunal vide order dated 25.8.2003 allowed the OA No.2913/2002. Para 7 of the order dated 25.8.2003 reads as under:

“There is no dispute that the applicants were promoted to the rank of Superintendent of Police in the year 2001 against the vacancies of the years 1997 and 1998. This Tribunal by order dated 6.9.2000 in OA No.1335/1998 had directed the respondents to make regular promotion to the posts of Superintendent of Police by holding the DPC to fill up the vacancies that occurred in 1989, 1997 and 1998 and thereafter till date in accordance with Rules existing on the date when the vacancies arose. In view of the fact that the vacancies against which the applicants have been promoted pertain to the year 1997 and 1998, the Recruitment Rules of 31.1.1997 were applicable. These Rules provided scale of pay of Rs.4100-5300 (Revised to Rs.14300-18300) for the post of SP, CBI. The Recruitment Rules providing for lower pay scale of Rs.3700-5000/- (Revised to Rs.12000-16500) were notified only w.e.f. 7.9.2000. We are of the view that the delay in convening the DPC cannot deprive

the applicants of their legitimate rights to higher pay scale of Rs.14300-18300 which was admissible to them when the vacancies arose. We, therefore, direct the respondents to allow them the same pay scale as has been allowed in the cases of certain SPs, CBI, who were earlier promoted on ad hoc basis.”

5. In compliance with the order dated 25.8.2003 passed by the Tribunal, the aforesaid 13 officers were granted pay scale of Rs.14300-18300/-. Petitioner made a representation to the respondents on 16.12.2011 seeking grant of pay scale of Rs.14,300-18300/-.
6. Since the representation of the petitioner was not considered, the petitioner approached the Tribunal. The stand taken by learned counsel for the petitioner before the Tribunal and this Court is almost identical. It has been contended by counsel for the petitioner that only after coming to know about the order dated 25.8.2003 passed by the Tribunal in OA No.2913/2002, the petitioner made the representation dated 16.12.2011 to respondent no.1 for granting him the pay scale of Rs.14300-18300/- on his promotion to the post of Superintendent of Police inasmuch as he was similarly placed as the applicants in OA No.2913/2002. The petitioner having claimed similar benefit as granted by the respondents to the applicants in OA No.2913/2002 in compliance with the order dated 25.8.2003 passed by the Tribunal, the plea of delay and laches, as raised by the respondents, is untenable.
7. In support of this contention, learned counsel has relied upon a decision rendered by the Supreme Court of India in the case of ***K.C. Sharma & Others v. Union of India & Others***, reported at 1998 (1) S.L.J. (SC) 54, wherein it has been held by the Apex Court that application filed by similarly placed persons should not be rejected for bar of limitation. Learned counsel has also relied upon a decision rendered by the Tribunal in the case of ***Savita Rani And Others v. Union of India, Chandigarh &***

Others, reported at 2003 (2) SLJ (CAT) 125, wherein it has been held that the Government should give benefit of a final decision to all similarly placed persons and that the Government should not unnecessarily send the people to Court.

8. It has further been contended by counsel for the petitioner that in terms of the order dated 6.9.2000 passed by the Tribunal in OA No.1335/1998 the respondents ought to have considered the case of the petitioner along with others for promotion to the rank of Superintendent of Police in respect of vacancies which arose in the years 1996, 1997, 1998, 1999 and upto 6.9.2000 in accordance with the Recruitment Rules of 1996. Instead of doing so, the respondents considered the cases of eligible officers in the rank of Deputy Superintendent of Police, including the petitioner, for promotion against the vacancies for the years 1996, 1997 and 1998 only and kept three vacancies unfilled, which included one for General Category. As one Sh.I.S. Saroha retired on 31.8.2000, i.e. before the Recruitment Rules of the year 2000 came into force on 7.9.2000, the respondents ought to have promoted the petitioner to the rank of Superintendent of Police against the said vacancy. As the respondents failed to promote him to the rank of Superintendent of Police in accordance with the Recruitment Rules of the year 1996 against the vacancy that arose on account of retirement of Sh.I.S. Saroha on 31.8.2000, the petitioner ought not to have been denied the pay scale of Rs.14300-18300/- on his promotion to the rank of Superintendent of Police.
9. Learned counsel for the petitioner has also submitted before this Court that the judgments relied upon by the Tribunal in the impugned order with regard to the petition being barred by delay and laches, are not applicable to the facts of this case as in this case there is a continuing cause of action in favour of the petitioner. Thus, the petition is within limitation.

10. Learned counsel for the respondents have opposed the present writ petition on the ground that the petitioner was promoted from the grade of Deputy Superintendent of Police to the grade of Additional Superintendent of Police in the year 2001 and thereafter from the grade of Additional Superintendent of Police to the grade of Superintendent of Police in the year 2002 in accordance with the Recruitment Rules of 2000 which came into force with effect from 7.9.2000. On his promotion to the grade of Superintendent of Police, the petitioner was granted pay scale of Rs.12000-16500/- as prescribed in the Recruitment Rules of 2000. He retired from service on 30.6.2004. After more than nine years of his promotion to the grade of Superintendent of Police in the pay scale of Rs.120000-16500/- and seven years after his retirement, the petitioner raised the issue of granting him the pay scale of Rs.143000/-18300/-. Thus, the issue raised by the petitioner is barred by delay and laches. In support of this contention, learned counsel has placed reliance on ***Bharat Sanchar Nigam Limited v. Ghanshyam Dass & Others***, reported at (2011) 4 SCC 374.
11. It has also been submitted by learned counsel for the respondents that the petitioner, having accepted his promotion from the grade of Additional Superintendent of Police to the grade of Superintendent of Police in the pay scale of Rs.120000-16500/- in the year 2002 without any demur, cannot be said to have a substituting or continuing right as regards his promotion to the rank of Superintendent of Police under the Recruitment Rules of 1996 so as to be granted the pay scale of Rs.14300-18300/-.
12. We have heard learned counsel for the parties, considered their submissions and also examined the impugned order passed by the Tribunal. It may be noticed that the Tribunal has considered the submissions made by counsel for the petitioner in detail and has dismissed the OA on the ground of limitation, besides other grounds.

13. We note that there is no explanation for not approaching the Tribunal between the period 2003 to 2012. The petitioner, in our view, cannot gain any advantage from the fact that the representation made by the petitioner was rejected and the order of rejection would give a cause of action to the petitioner.
14. In the case of ***C. Jacob v. Director of Geology and Mining and Another***, reported at (2008) 10 SCC 115, the Supreme Court of India has observed as under:

“Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

15. Further in the case of ***Union of India and others v. M.K. Sarkar***, reported at (2010) 2 SCC 59, the Supreme Court of India, after referring to ***C. Jacob’s case*** (supra), has ruled that when a belated representation in regard to a ‘stale ‘ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action or reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a direction of the Court to consider a representation issued without

examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. Also in the case of *Bharat Sanchar Nigam Limited v. Ghanshyam Dass and others* (supra) the Supreme Court of India reiterated the principle stated in the case of *Jagdish Lal v. State of Haryana*, reported at (1977) 6 SCC 538 and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.
17. In our view, there is no infirmity in the order passed by the tribunal. The Tribunal has correctly applied the law laid down by the Supreme Court of India to the facts of the present case with regard to plea raised by the respondents regarding delay and laches. The Tribunal has also rightly held that the petitioner is not similarly placed as the applicant in O.A.No.2913/2002. We find no grounds to interfere in the impugned order. The writ petition is devoid of any merit and the same is accordingly dismissed.

CM APPL. 23687/2015 (STAY)

18. Application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 18, 2015
gr/msr