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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6483 of 2009**

B.N.Dwivedi (IFS) S/o Shri Tulsi Ram Dwivedi, R/o D-2/31, Government Residential Colony, Sector-1, Devendra Nagar, Raipur, Chhattisgarh, Working as Chief Conservator of Forest cum Executive Director, Chhattisgarh State Minor Forest Produce (Trade & Development) Cooperative Federation, A-25, VIP Estate, Shankar Nagar, Raipur, Chhattisgarh, Presently working as Chief Conservator of Forest in the office of Principal Chief Conservator of Forest, "Aranya Bhawan" Medical College Road, Raipur, (Chhattisgarh)

---- Petitioner**Versus**

1. Union of India, Through Secretary, Government of India, Ministry of Environment and Forests, CGO Complex, Lodhi Road, Paryavaran Bhawan, New Delhi.
2. State of Chhattisgarh, Through Secretary, Government of Chhattisgarh, Department of Forests, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh.
3. State of Madhya Pradesh, Through Secretary, Government of Madhya Pradesh, Department of Forests, Vallabh Bhawan, Bhopal, Madhya Pradesh.
4. Shri Ratan Purwar, Secretary, Government of Madhya Pradesh, Department of Forests, Vallabh Bhawan, Bhopal, Madhya Pradesh.

--- Respondents

For Petitioner	:	Shri A.V.Shridhar, Advocate.
For Respondent/UoI	:	Shri Narendra Kumar Vyas, Assistant Solicitor General
For Respondent/State	:	Shri R.K.Gupta, Deputy Advocate General.
For Respondent No. 3	:	Shri Sachin Singh Rajput, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Order on Board****Per Navin Sinha, Chief Justice****03/05/2016**

1. The present application assails order dated 29.8.2008 passed by the Central Administrative Tribunal, Camp at Bilaspur, in Original Application No. 136 of 2005

(hereinafter called 'the Tribunal'). The Tribunal rejected the claim of the Petitioner for promotion to Selection Grade with effect from 1.7.1993, the date when his juniors were granted the same. Review Application No. 44 of 2008 filed against the same was also dismissed on 20.2.2009.

2. Learned Counsel for the Petitioner submitted that whatever may have happened in the past or that the Petitioner may not have pursued matters in due time are irrelevant considerations once the Respondents rejected his representation which provides the cause of action. The Tribunal erred in holding that the claim was belated and barred by delay. The Petitioner represented on 8.1.2004 which was rejected on 26.5.2004. The OA was filed with promptness in 2005. Reliance in support of the submission was placed on Section 20(2)(a) and 21 of the Administrative Tribunals Act, 1985 (hereinafter called 'the Act').

3. It was next submitted that departmental proceedings were pending against the Petitioner from 14.3.1991 which was ultimately dropped on 4.5.2000. The delay for this period therefore stands explained. The Tribunal has also wrongly rejected challenge to the assessment as made by the Selection Committee.

4. Learned Counsel for the Union of India and the State submitted that the Petitioner sought Selection Grade retrospectively against three persons but impleaded only one of them as party-Respondent. The OA therefore suffers from serious defect of parties and the present application is therefore fit to be dismissed on that ground alone. The Court may not interfere under Article 226 of the Constitution. It was next submitted that not only were the juniors to the Petitioner granted Selection Grade on 6.12.1995 with effect from 1.7.1993 but that his case was regularly considered in Departmental Promotion Committee meetings dated 31.10.1994, 30.12.1995, 3.5.1997 and 20.2.1998. In the departmental proceedings, the enquiry officer held the charges to be proved. Without prejudice to the aforesaid, it was next submitted that Selection Grade was granted to the

Petitioner on 1.8.2001 and he was promoted to the post of Conservator of Forest with immediate effect. On 2.5.2002, he was further promoted to the post of Chief Conservator of Forest. The Petitioner therefore had an opportunity to lodge his protest in 1995, 2001 and again in 2002. Mere filing of a belated representation in a promotion matter on 8.1.2004 will not condone earlier delay warranting interference by a Court upsetting the apple cart of promotions creating third party rights and interest especially when they have not been impleaded as party also. Emphasizing that there was an inherent urgency in service matters particularly with regard to promotions, reliance was placed on (2013) 12 SCC 179 (State of Uttaranchal v. Shiv Charan Singh Bhandari).

5. We have considered the submissions on behalf of the parties.

6. If a Government servant stakes a claim for promotion and the grievance is that juniors have been promoted seeking a relief to be placed above the juniors, obviously, if relief is to be granted, it would affect the juniors who had already been granted the benefit. Such juniors are therefore necessarily required to be heard and for that purpose compulsorily must be made party-Respondent. The Petitioner alleged that Shri Ratan Purwar, Shri J.P.Sharma and Shri B.L.Saran were juniors to him and were granted Selection Grade above him on 6.12.1995 with effect from 1.7.1993. But in the OA, only Shri Ratan Purwar was impleaded as Respondent. The question of impleadment in a representative capacity, in a personal cause of action with regard to promotions simply does not arise. The OA was therefore inherently defective at its institution as the grant of any relief as sought would as a necessary corollary place the Petitioner above the three. That in our opinion was sufficient to dismiss the writ application declining interference with the order of the Tribunal, though for different reasons. But since arguments have been addressed before us, we consider it proper and our duty to deal with the same so that the Petitioner is not left with a lingering sense of injustice.

7. A memo of charges were issued to the Petitioner on 14.3.1991. The enquiry officer submitted his findings on 23.3.1994 that the charges stood proved. The disciplinary action was dropped with the concurrence of the Central Government on 4.5.2000. The latter order has not been brought on record for us to peruse. It is therefore not possible for us to make any observation or consider this aspect either ways. If for the sake of discussion, we were to accept the submission of the Petitioner that the delay if any from 9.5.2000 stands explained on account of pendency of the departmental proceedings which never culminated in punishment and therefore question of delay does not arise yet it will not bring any succor to the Petitioner as he has further explaining to do.

8. If the Petitioner was working in the same office with his juniors now working above him, it is difficult to accept that he was unaware of the Selection Grade granted to his juniors. Surely, it must have been the talk of the office. No explanation has been furnished why the Petitioner took no steps to enforce his grievance between 4.5.2000 when the disciplinary action was dropped till he was granted Selection Grade by the authorities on 1.8.2001. This was the first opportunity for the Petitioner to ventilate his grievance for grant of Selection Grade with effect from 1995. The right was waived. Again, a fresh opportunity was granted to him when Selection Grade was granted from 1.8.2001 and not from 1995. A third opportunity was granted to him on 2.5.2002 when he was promoted to the post of Conservator of Forest. At all these three stages, he waived his rights to raise his grievance against supersession. Two years after he was promoted to the post of Chief Conservator of Forest, he sought to represent on 8.1.2004 and now seeks to found a cause of action by filing OA in 2005 contending that the representation stood rejected recently on 26.5.2004. We are of the considered opinion that rejection of the representation dated 26.5.2004 does not condone or explain the lapses on the part of the Petitioner from 9.5.2000 till he filed the

representation dated 8.1.2004.

9. There is always an inherent urgency in service matters more particularly with regard to promotion. Third party rights accrue to those who are promoted and fructify with passage of time. Those promoted also gets sanguine and well entrenched in their promotional post. Any belated judicial interference is bound to have ripples right across a gradation list and cannot be understood, confined and restricted to the contestants only as there will necessarily be a fall out of the same. If third party rights have accrued, to disturb them, there must be a reasonable, plausible and justifiable explanation for the delay. In Shiv Charan Singh Bhandari (supra), relied upon by the Respondents, it has been observed as follows:

"19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P.S.Sadasivaswamy v. State of T.N.*, wherein it has been laid down that:

"2..A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. "

10. In view of our conclusion that the Tribunal rightly held that the claim was highly belated and stale, the observation with regard to absence of any specific challenge to the Departmental Promotion Committee becomes irrelevant.

11. Adverting to Section 20 and 21 of the Act, it is difficult to accept the submission on behalf of the Petitioner that the cause of action would accrue only after rejection of the representation filed on 8.1.2004 at the Petitioner's leisure without having to explain the earlier inaction on his part for nearly three and a half years with three opportunities to ventilate his grievances. It is apparent that Section 20(2)(a) was intended to prevent institution of applications directly before the Tribunal without approaching the authorities first as the possibility for grant of relief if a representation is filed first, always remains. To accept the submission that a fresh cause of action would accrue on rejection of the belated representation would be reading the statutory provisions in a manner which would allow stale claims to be raised at any time contrary to the dicta laid down in (2008) 10 SCC 115 (C.Jacob v. Director of Geology & Mining). For the same reason, the submission that the limitation would run for one year under Section 21(1)(b) of the Act from the date of rejection of the representation does not appeal to us for like reasons.

12. We therefore find no merit in the writ application. The writ application is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE