

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 21507 of 2015 (O&M)

Date of decision : 22.3.2016

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Anita Yadav

.....Petitioner

vs.

Central Administrative Tribunal, Chandigarh Bench
Chandigarh and others

.....Respondents

**Coram: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Samrat Malik, Advocate for the petitioner.

Mr. Vikas Chatrath, Advocate and
Mr. Parveen Kumar, Advocate for respondent Nos. 2 to 4.

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1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

P.B. Bajanthri, J.

The petitioner has questioned the validity of the order dated 2.9.2015 (Annexure P-13) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'Tribunal') in O.A.No. 060/00764/2014 .

(2) On 15.3.2010 the Police Department, U.T., Chandigarh, advertised 1200 posts of Constable (Executive). The posts were classified as follows:-

<i>Total number of posts</i>	<i>Male</i>	<i>Female</i>	<i>General Category (Female)</i>	<i>SC Category (Female)</i>	<i>OBC Category (Female)</i>
1200	823	377	201	63	113

(3) The petitioner applied for the post of Constable (Executive) under OBC category. The results were announced on 14.11.2010 and the petitioner secured 39 marks. The petitioner's initial grievance was that even though she had secured 39 marks under OBC category, a candidate who had secured 37 marks was called for interview under the general merit category. In this regard, she filed Original Application No. 437/HR/11 of 2011 before the Tribunal, which was disposed of in favour of the petitioner. The Chandigarh Police Administration, feeling aggrieved by the order of the Tribunal dated 20.1.2012, preferred review application and the same was dismissed. Consequently, CWP No. 15862 of 2012 was filed before this Court, which was also dismissed on 2.4.2013. Thereafter, it appears that petitioner filed COCP before the Tribunal and during its pendency, she was called for interview on 29.7.2013 and awarded 6 marks. Her name was finally included in the waiting list at Sr. No.10.

(4) The petitioner was dissatisfied with the marks awarded to her and she submitted an application under RTI seeking for supply of question and answer of the written examination papers. The same were supplied on 4.10.2013. She came to know that question No.41 though was appropriately answered by her, however, the key

answer was contrary to the correct answer. If question No. 41 is re-evaluated or re-corrected, she claimed to get $41 + 6 = 47$ marks and the last candidate under OBC category having secured 46 marks, she sought her inclusion in the selection list in the OBC category. In this regard petitioner firstly submitted a representation on 19.11.2013, which was rejected on 7.8.2014 on the ground of delay. Feeling aggrieved, she approached the Tribunal once again in the month of August 2014. Her O.A. No. 060/00764/2014 has been dismissed on 2.9.2015 on the ground of delay, hence this petition.

(5) Learned counsel for the petitioner contended that the Tribunal has mislead itself while rejecting the petitioner's grievance on the ground of delay. Having regard to the dates and events, the petitioner came to know of the fact that wrong key answer was notified by the official respondents for which she is entitled to additional marks after the official respondent supplied question and answer papers on 4.10.2013. She submitted representation to award marks to question No.41 and to select and appoint her as Constable (Executive). Her grievance was rejected on 7.8.2014, therefore, there is no delay in approaching the Tribunal. It was further contended that one Smt. Anju Rathi, who had identical grievance before the Tribunal, was considered and her grievance was set right by the official respondents by awarding additional marks. That apart, it was contended that there are large number of vacant posts of Constable available, as is evident from Annexure P-14, hence the petitioner can be considered for appointment for one of the vacant posts without

affecting anyone's right.

(6) Learned counsel for the respondents submitted that the cause of action accrued in the year 2010-11, the date on which key answer/results were announced on website. Had the petitioner any objection against question No. 41, she ought to have raised objection then and there. The petitioner slept over the matter. In fact, she did not take such a plea in the earlier petition also when she approached the Tribunal in respect of inviting the candidates for interview who had secured lessor marks than her in the written test. In other words, the petitioner's grievance is in piece-meal, in so far as the present petition is concerned. It is highly belated one and delay has not been explained under Section 21 of the Administrative Tribunal Act, 1985. The petitioner has also not impleaded last candidate under the general merit and OBC category who are bound to be affected if the petitioner's claim is accepted. The petitioner cannot claim relief on par with Smt. Anju Rathi for the reason that the latter had approached Tribunal within the time limit. So far as availability of vacant posts is concerned, petitioner has been informed pursuant to her RTI application dated 4.10.2013 that "Point No.2 No post is vacant against the said advertisement (OBC Category)." The petitioner had pointed out that vacant posts are available as per the information furnished by the concerned authority vide communication dated 24.9.2015. The same cannot be looked into for the reasons that vacant posts position is with reference to Constable to Sub Inspector in the Police Force of all Union Territories including Delhi Police. In any

case, the said information relating to vacancies of Constable posts is not relevant for the purpose of recruitment to the post of Constable (Executive) pursuant to the notification dated 15.3.2010 in Chandigarh Police. The petitioner has, thus, not made out any case to interfere with the order of the Tribunal.

(7) Learned counsel for the respondents relied on the decision Ms. Monika Mehrania vs. State of Punjab and another 2003 (5) SLR 791 . The relevant extract of which is reproduced hereunder:-

“6. We have heard learned counsel for the parties and perused the record. In our opinion, the writ petition is liable to be dismissed because-,

(i) the petitioner has not impleaded one of the selected candidates as party respondent who may be adversely affected in the event of acceptance of her plea for admission and without hearing such candidate, the Court cannot pass an order nullifying his/her admission.”

The decision State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others 2015 (1) SCC 347, (para 23), has also been relied upon by the respondents.

(8) Heard learned counsel for the parties.

(9) The cause of action accrued to the petitioner in the year 2010-11 when the results were declared and petitioner's marks were notified as 39 marks. There is thus inordinate delay in approaching

the Tribunal, in so far as revaluation/correction of key answers. The petitioner was very much aware of the awarding of marks in the year 2010-11, as the result with Answer-key was duly notified on the website. When the petitioner noticed that she was not selected and appointed to the post of Constable (Executive), then only she made investigation in respect of award of marks with reference to key answers, which was the subject matter of adjudication in Smt. Anju Rathi's case. The petitioner cannot have grievance in a piece-meal manner before the Tribunal/Court, without explaining the delay in filing O.A. No. 060/00764/2014 in the month of August 2014. Under Section 21 of Central Administrative Tribunal Act, the petitioner was required to give her explanation with reference to the cause of action accrued in the year 2010-11. Non-filing of application to condone the delay in filing the application before the Tribunal, the petitioner's claim is liable to be rejected. The Apex Court in the case of Ramesh Chand Sharma vs. Udham Singh Kamal and others (1999) 8 Supreme Court Cases 304, held as follows:-

“4. The respondent No. 1 Udham Singh Kamal on 2nd June, 1994 filed Original Application (O.A.) before the Himachal Pradesh Administrative Tribunal. This O.A. was admittedly beyond the prescribed period of limitation of three years as provided under [Section 21](#) of the Administrative Tribunals Act, 1985. As regards the limitation in paragraph 5, the first respondent has stated as

under :

"The applicant further declares that the application is within the limitation prescribed in [Section 21](#) of the Administrative Tribunals Act, 1985."

This averment clearly indicates that the first respondent was all along asserting that he had filed O.A. within limitation but it was not so. The appellants in both these appeals have raised a contention that the O.A. was beyond three years and, therefore, the same was barred by limitation under [Section 21](#) of the Administrative Tribunals Act, 1985. Despite this objection raised by the appellants, the first respondent did not file any application for condonation of delay. [Section 21](#) (3) of the Act gives power to the Tribunal to condone the delay if sufficient cause is shown.

5. [Section 21](#) reads 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) xxxx xxxx xxxx xxxx

(3) Notwithstanding anything contained in sub-section (1) or subsection (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."

Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the O.A. filed by the first respondent Udham Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under sub-Section (3) of [Section 21](#) praying for condonation of delay,

the Tribunal had no jurisdiction to admit and dispose of O.A. on merits. It was, therefore, contended that the Tribunal has totally overlooked the statutory provision contained in [Section 21](#) of the Act and, therefore, impugned order be set aside.”

(10) The petitioner's contention that her case is similar to Smt. Anju Rathi for re-evaluation/revise key answer and award of marks, cannot be entertained even if it is true on merits, due to the delay and laches on the part of the petitioner. In this regard, the Apex Court in *Arvind Kumar Srivastava's case (Supra)* further held that :-

“ 22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons

should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof

to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma & Ors. v. Union of India*). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of Page 27 27 the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

(11) The petitioner thus cannot seek parity or relief with reference to the claim of Smt. Anju Rathi accepted by Tribunal.

(12) The petitioner's further claim is that last OBC candidate secured 46 marks and the general merit category got 37 marks, hence she is entitled to be selected after rectification of the result, cannot be accepted. For the grant of any relief, the petitioner was required to implead the last candidate of general merit/OBC category and make out a case for condonation of delay. It was noticed that petitioner has failed to implead last candidate of the relative category. For non-impleadment of last selected and appointed candidate, the petition

fails.

(13) The last contention of the petitioner is that there are vacant posts of Constable available, as is evident from RTI information furnished vide communication dated 22.9.2015. The said information is relating to Constable to Sub Inspector as on 22.9.2015. The vacant posts, on the contrary under RTI information only, the petitioner has been informed that there are no vacant posts pursuant to her RTI application dated 4.10.2013 i.e. “Point No. 2 No post is vacant against the said advertisement (OBC Category)” vide Annexure P-3/B. It is to be noted that any future vacancy after the advertisement has to be filled up in accordance with the rules of recruitment i.e. after due advertisement. Since there were no vacant posts pursuant to the notification dated 15.3.2010, the contention of the petitioner is factually incorrect and not tenable.

(14) In view of the facts and circumstances, the petitioner has not made out a case so as to interfere with the order of the Tribunal dated 2.9.2015 passed in OA No. 060/00764/2014 and the petition is rejected.

(15) No order as to costs.

(**Surya Kant**)
Judge

(**P.B. Bajanthri**)
Judge

22nd March, 2016.
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