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

+ W.P.(C) 6164/2016

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Judgment dated 27th July, 2016

DHARAM VEER

..... Petitioner

Through : Ms.Rani Chhabra and Ms.Priyanka
Sony, Advs.

versus

BHARAT SANCHAR NIGAM LIMITED & ORS Respondents

Through : Mr.R.V. Sinha, Mr.R.N. Singh and
Mr.A.S. Singh, Advs. for respondents.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 31.5.2016 passed by Central Administrative Tribunal (in short '*the Tribunal*'), in O.A.No.1837/2015 whereby the Tribunal dismissed the OA filed by the petitioner on the ground of delay in approaching the Tribunal.
2. The brief facts of the case, as per the petition, are that the petitioner was initially engaged by the respondents as a casual labourer in the Office of Delhi Transport Office (DTO), Paharganj, New Delhi, w.e.f. October, 1995. The petitioner continued to work as a casual labourer without any break in service upto October, 2001. The petitioner claims that the Telegraph Unit (Centre), Sub-Divisional Engineer, Central Telegraph Office, which was the Head Office of DTOs, used to maintain a common seniority list of part-time casual labourer working

in all the DTOs.

3. Further as per the petition, the DTO Office at Paharganj, where the petitioner was working, was closed in the year 2001 and he was, thus, declared as surplus w.e.f. October, 2001. It is also claimed that other labourers, employed in separate DTOs which were also closed down, were re-employed in other offices, however, the petitioner was denied re-employment. The petitioner thereafter made a representation to respondents no.3 and 4 seeking re-employment and also bringing to their notice the instances of Mr.Naresh Kumar and Ms.Gudi, who had been given re-employment. Since the request of the petitioner was not acceded to despite the petitioner informing the respondent and giving instances of similarly situated persons such as Mr.Naresh Kumar and Ms.Gudi, he filed a writ petition in the Delhi High Court, being W.P.(C)No.11774/2004. The said writ petition was allowed vide order dated 26.10.2005, operative portion of which reads as under:

“11. I am, therefore, of the opinion that the respondents have acted in a discriminatory manner while denying the petitioner re-engagement and the benefit of the treatment as full-time worker pursuant to the policies.

12. For the reasons indicated above, the respondents are directed to offer a suitable post to the petitioner within a period of three months from today and grant the same treatment as was given to Sh. Naresh Kumar, Smt. Guddi whose instances having discussed above.

13. The writ petition is allowed to the extent indicated above.”

4. Pursuant to the order passed on 26.10.2005, the petitioner was re-employed initially as a part-time casual labourer and thereafter a full-

time casual labourer but he was not regularised.

5. It is the case of the petitioner that since he was not regularised, he made several representations to the respondents to comply with the directions contained in the order dated 26.10.2015 passed in W.P.(C)No.11774/2004. Vide communication dated 13.6.2013, the petitioner was informed that it would not be possible to regularise him in view of the decision rendered by the Apex Court in the case of ***Secretary, State of karnataka v. Uma Devi***, reported at 2006 (4) SCC 1. The petitioner thereafter filed a contempt petition, being Cont.Cas(C)No.740/2013, in the High Court of Delhi. The Delhi High Court vide order dated 14.10.2014 dismissed the contempt petition on the ground that the contempt petition has been filed by the petitioner after a period of six years. The High Court, however, noticed that the communication dated 13.6.2013 is a fresh cause of action, which has accrued in favour of the petitioner, and the same cannot be said to be contempt. The petitioner thereafter filed OA No.1837/2015 before the Tribunal, which was dismissed on 31.5.2016. Operative portion of the order dated 31.5.2016 reads as under:

“11. However, having considered the matter in Contempt Petition preferred by the applicant before the Hon’ble High Court and ruled as above, the Hon’ble High Court was clearly of the opinion that whatsoever might have been the merits of the case, the delay of seven years could not have been condoned. Once the Hon’ble High Court has taken a position, it is not for the Tribunal to rule otherwise as it amounts to modification of the order of the High Court for which this Tribunal is not competent.”

6. Ms.Chhabra, learned counsel for the petitioner, submits that the Tribunal has failed to take into consideration that the contempt petition

was dismissed on account of limitation and it is not that the High Court has held that the claim of the petitioner had become stale. Counsel further submits that the cause of action accrued in favour of the petitioner on 13.6.2013. Thereafter the petitioner filed contempt petition. After the contempt petition was dismissed the petitioner approached the Tribunal and the Tribunal has not taken the above factors into consideration.

7. Mr.Sinha, learned counsel for the respondents, enters appearance on an advance copy and submits that the present petition is not maintainable as there is no infirmity in the impugned order passed by the Tribunal. Counsel further submits that the cause of action accrued in favour of the petitioner in the month of March, 2007, and not in the year 2013, as claimed by the petitioner.
8. We have heard learned counsel for the parties. We have also carefully examined the order dated 26.10.2015 passed in W.P.(C)No.11774/2004, the order dated 14.10.2014 passed in Cont.Cas(C)No.740/2013, and the impugned order dated 31.5.2016 passed by the Tribunal. We are of the view that the learned Tribunal has completely misread the order dated 14.10.2014 passed in Cont.Cas(C)No.740/2013. The learned Single Judge dismissed the contempt petition while relying on Section 20 of the Contempt of Courts Act, as per which the period of limitation prescribed is one year. Section 20 of the Contempt of Courts Act reads as under:

“20. Limitation for actions for contempt.- No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.”

9. In view of Section 20, the contempt petition was not entertained being

barred by limitation. We may also notice that it is the same Single Judge who opined that a fresh cause of action accrued in favour of the petitioner. The Single Judge observed that if at all it gives rise to any cause of action in favour of the petitioner against his non-regularisation, it is only a fresh cause of action which can be agitated by him in an independent writ petition. Thus, for the Tribunal to say that since the High Court was of the opinion that there was delay, the OA could not be entertained by the Tribunal.

10. Accordingly, we remand the matter back to the Tribunal. The Tribunal shall take an independent view as to whether there was delay in filing the OA or not; when the cause of action accrued; whether the petitioner had spent time in other proceedings; and whether the time spent is to be deducted or not and subject to objections which are raised by the respondents. We make it clear that we have not expressed any opinion on the merits of the matter.
11. Resultantly, present writ petition is allowed. The impugned order dated 31.5.2016 is set aside and the matter is remanded back to the Tribunal for fresh hearing. The Tribunal will decide the matter in accordance with law. Pleas of both the parties are kept open.
12. Writ petition stands disposed of.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 27, 2016

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