

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

+ **WRIT PETITION (CIVIL) No. 3387/2016**

% **Reserved on:** 8th November, 2016
Date of Decision: 4th January, 2017

RAM SINGH Petitioner

Through: Mr. J.S. Maan, Advocate.

versus

CHAIRMAN CUM MANAGING DIRECTOR DELHI
TRANSPORT CORPORATION & ORS Respondents

Through: Ms. Manisha Tyagi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

Ram Singh by this writ petition impugns order dated 23rd December, 2015 whereby his OA No.4138/2013 has been dismissed as barred by limitation.

2. This is the third round of litigation by the petitioner, who had earlier filed OA Nos.2322/2012 and 3337/2012. OA No. 2322/2012 was dismissed as withdrawn as recorded in the order dated 17th July, 2012 after the Tribunal had noted that the original application was barred by limitation and no application had been filed for condonation of delay. OA

No.3337/2012 was filed along with an application M.A. No.2785/2012 seeking condonation of delay. This OA and the application were dismissed vide order dated 10th October, 2012 recording that there was delay of nearly 15 years. Reference was also made to the order dated 17th July, 2012 by which OA No.2322/2012 was dismissed. It was observed that the petitioner was unable to explain and show reasonable and satisfactory cause for the prolonged delay. The petitioner had referred to the communication dated 30th August, 2012 and the fact that he had earlier challenged the order dated 9th April, 2012. The Tribunal, however, did not accept the plea of the petitioner that the cause of action had arisen in 2012.

3. The petitioner thereupon had filed W.P. (C) No. 4268/2013, which was dismissed by a speaking order dated 9th July, 2013, recording that the cause of action had accrued on 31st July, 1997, when persons junior to the petitioner were promoted. Albeit, the petitioner had filed OA No.3337/2012 after 15 years without giving satisfactory explanation for the said delay. The Court also recorded that the writ petition impugning order dated 10th October, 2012 passed by the Tribunal in the said OA was challenged after nearly 9 months. Pertinently, the petitioner did not raise any other ground or contention, except for stating that the petitioner was an

innocent and hardworking person, but this it was observed would not explain the quietus for 15 years. Thereafter, Review Petition No.531/2013 was filed by the petitioner, which too was dismissed vide order dated 23rd October, 2013. This order records that the petitioner had claimed consequential benefits including all promotions. The Division Bench had dismissed the prayer for review, rejecting the plea that a wrong impression had vitiated the order of which review was sought.

4. Undeterred, the petitioner thereafter filed the aforesaid OA No.4138/2013, which as noticed above, was dismissed vide order dated 22nd December, 2015.

5. Counsel for the petitioner submits that the prayer made in OA No.4138/2013 is different from the prayer made in OA No. 3337/2014 and our attention was drawn to prayer clause of OA No. 4138/2012. For the sake of convenience, we would like to reproduce the prayer clause of the two OAs as mentioned in the writ petition itself:-

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OA 3337/2012	4138/2013
(i) Quash the impugned Memorandum/order dated 30.08.2012, 09.04.2012, 10.02.2010 and 21.09.2011 passed by the Respondents.	a) Call for the record of the case and quash DPC proceedings as intimated vide letter dated 21.09.2011 by the Respondent; and/or
(ii) Issue direction to the	b) Quash Appellate order

respondents to promote the from 31.07.1997 and grant the all promotion benefits since then. (iii) Grant cost in favour of the. (iv) Any other relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case may also granted in favour of the in the interest of justice.” (Refers para 7 of impugned order)	dated 09.04.2012 passed by the Respondents; and/or c) Quash adverse remarks awarded to the in the year 2000 as intimated to the vide letter dated 21.09.2011 by the Respondents; and/or d) Direct the respondents to consider the, afresh and treat his promoted for the post of Traffic Inspector w.e.f 2003 or in subsequent years instead of w.e.f 10.02.2010 with pay & allowances applicable as per e) Direct the respondents to grant consequent further promotions to the post of Supervisor and upward with pay & allowance applicable as per the rules; and/or f) Direct the respondents to grant arrears of pay & allowances applicable as per the rules for the post of ATI w.e.f. 1997; and/or g) Pass such other or further orders as may be deemed fir and proper in the facts and circumstances of the case. (Refers para 1 of impugned order)
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6. The contention of the petitioner is that he had challenged the order dated 10th February, 2010 in OA No.4138/2013 and, therefore, the said OA

was not barred by limitation as such. Our attention was drawn to the letter dated 4th November, 2009 stating that the counterparts of the petitioner have already been promoted to the post of Assistant Traffic Inspector on officiating basis vide memorandum dated 2nd June, 1999 and that the petitioner, though promoted on 10th August, 2008, the period from 4th June, 1999 would be reckoned towards minimum period of service for determining his eligibility for promotion to the next higher post. It is submitted that vide memorandum dated 10th February, 2010, the petitioner was promoted to the post of Traffic Inspector, but this promotion was belated and was due earlier when others similarly situated as the petitioners were promoted.

7. We are afraid that the petitioner cannot be permitted and allowed to raise the aforesaid pleas. We have quoted the two prayer clauses in OA Nos.3337/2012 and 4138/2013. In OA No.3337/2012, the petitioner had specifically challenged the orders dated 10th February, 2010 and 21st September, 2011. By order dated 10th February, 2010, the petitioner had been promoted to the post of Traffic Inspector and the challenge obviously was not to the promotion from the said date, but the petitioner wanted retrospective promotion from an earlier date. The petitioner has not

bothered and cared to place on record a copy of the OA No.3337/2012, but it is apparent that the order dated 10th February, 2010 was questioned and challenged in OA No.3337/2012. As noted above, OA No.3337/2012 was dismissed on the ground of limitation vide order dated 5th October, 2012. This order was affirmed when W.P (C) No. 4268/2013 filed by the petitioner was dismissed vide order dated 9th July, 2013. The petitioner then in the said OA and writ petition did not seek to explain the “difference” between the reliefs prayed with regard to antedating his promotion to the post of Assistant Traffic Inspector from 1997 and Traffic Inspector from 2003 instead of 10th February, 2007.

8. In view of the order dated 9th July, 2013 passed in W.P. (C) No. 4268/2013, upholding the dismissal of OA on the ground of limitation, which indeed it was, we do not think that the petitioner can be permitted and allowed to file a second round of litigation, projecting that it is predicated on a different or new cause of action which had arisen on 10th February, 2010. The petitioner has reworded the prayer clauses, which substantially and in substance claim the same and similar reliefs.

9. It is correct that the order dismissing the OA on the ground of limitation would not operate a *res judicata* on the merits but would bar and

prohibit any subsequent adjudication on question of limitation based on the same cause of action. Principles of constructive *res judicata* would also apply and hit the plea/contention raised. Once the Delhi High Court had affirmed the dismissed order, the petitioner could not have initiated another round by filing OA No.4318/2013. The law of limitation and the decisions of the Tribunal and the High Court affirming rejection of OA No.3337/2012 on the ground of limitation would interject and prevent the petitioner from raising the issue again. Public policy postulates and endorses end to litigation and not repeated litigation.

10. The record demonstrates, as discussed hereinabove that the OA No.2322/2012 was dismissed as withdrawn as recorded in the order dated 17.07.2012 after the tribunal had noted that the Original Application was barred by limitation and no application had been filed for the condonation of delay. O.A. No. 3337/2012 was filed alongwith M.A. No. 2785/2012 seeking condonation of delay and the same was also dismissed vide order dated 17.07.2012 observing that the petitioner was unable to explain and show the reasonable and satisfactory cause for the delay. The petitioner challenged the order dated 17.07.2012 by way of filing W.P.(C) No.4268/2013 which was also dismissed. The review petition thereafter

was dismissed. The petitioner had failed to explain and show reasonable and satisfactory cause for the delay as well as due diligence. The second round, in such circumstances, was rightly censured and rejected.

11. We do not find any infirmity in the order of the tribunal. Accordingly, the writ petition is dismissed.

(CHANDER SHEKHAR)
JUDGE

(SANJIV KHANNA)
JUDGE

JANUARY 04, 2017
NA/ssc

