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

+ W.P.(C) 6331/2017 & C.M. Nos.26219-20/2017

ASHIS SHOME

..... Petitioner

Through: Mr. Rudra Dutta, Ms. Kashui Dutta  
and Mr. Omar Munir, Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Vivek Goyal, CGSC with Mr.  
Harsh Pandit, Adv

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MR. JUSTICE I.S. MEHTA**

**ORDER**

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**15.09.2017**

1. The petitioner has preferred the present petition to assail the order dated 22.05.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No. 4350/2014 and M.A. No.3064/2014. By the impugned order, the Tribunal has dismissed the aforesaid miscellaneous application whereby the petitioner/ applicant sought condonation of 5010 days delay in filing the O.A. The Tribunal has also imposed costs of Rs.10,000/- on the petitioner.

2. The petitioner had preferred the said O.A. with the plea that he may be promoted to the post of Head Constable with effect from 16.06.1991. He

also sought a direction to the respondent Delhi Police to give ad-hoc promotion to the applicant according to service seniority as per seniority list on 16.05.1994.

3. The case of the petitioner is that a final seniority list of Constables of Delhi Police was prepared on 16.05.1994, wherein he was shown at sl. no.1, whereas Sh. Bhale Ram, Sh. R.K. Mandal and Sh. Chhotu Ram were shown at sl. nos.2, 4 and 6 respectively. He claimed that though the said persons were junior to him in the seniority list, as a matter of fact, they had been promoted as Head Constable in the year 1991 itself, thereby ignoring the claim of the petitioner. Similarly, three other persons at sl. nos.5, 7 and 8 were also promoted as Head Constable ignoring the petitioner. Eventually, the petitioner was promoted as Head Constable on 27.01.1998. The juniors of the petitioners were further promoted to the post of Sub-Inspector and Inspector ignoring the petitioner's seniority as shown in the seniority list dated 16.05.1994.

4. The petitioner initially preferred O.A. No. 2627/2012 seeking the same relief as sought in the O.A. No. 4350/2013. An objection was raised on behalf of the respondents that the relief sought in the O.A. were barred by time, since the petitioner had assailed the order dated 02.07.1998 and his supersession in terms of the seniority list on 16.05.1994 without explaining the delay. It was stated on behalf of the petitioner that he was aggrieved by the order dated 25.01.2011 which was a reply given to his representation dated 24.11.2010. The petitioner withdrew the said O.A. to enable him to file a fresh one with appropriate prayer and pleadings. The said O.A. was accordingly dismissed as withdrawn on 12.09.2013.

5. The petitioner then preferred the present O.A. along with the aforesaid application to seek condonation of 5010 days delay. The Tribunal has rejected the petitioner's contention that he had a continuing cause of action. The Tribunal relied upon ***D.C.S. Negi v. Union of India***, decided on 07.03.2011 in SLP (C) No.7956/2011 (CC No.3709/2011). It also placed reliance on a decision of this Court in ***P.K. Pandey v. Union of India***, 2011 (6) AD Del 350.

6. The submission of learned counsel for the petitioner is that the cause of action of the petitioner was a continuing one. She further submits that if the relief is granted to the petitioner, it is only the petitioner who would be benefitted and no other person would be affected at this stage. The reason for the same is stated to be that the persons who allegedly superseded the petitioner have already retired from the service. In support of her submission, she has placed reliance on ***Union of India v. Tarsem Singh***, (2008) 8 SCC 648 and, in particular, para 7 thereof.

7. Reliance is also placed on ***R.K. Kapoor v. Union of India***, W.P. (C.) No. 3992/2011 decided on 23.04.2012 and in particular para 3 of the said decision, which reads as follows:

*“4. The proposition of law which emerges from these decisions is that ordinarily, the limitation prescribed in Section 21 of the Administrative Tribunals Act needs to be applied wherever the remedy sought by the applicant before the Tribunal is barred by limitation. If, however, a continuous/recurring wrong has been caused to the applicant, and he is otherwise found entitled to the relief claimed by him, the relief should not be denied to him only on account of delay in approaching the Court/Tribunal. If the relief sought by the*

*applicant before the Court/Tribunal, if granted, is related to or likely to affect other persons, the Court/Tribunal would not be justified in granting such a relief, even if the applicant is otherwise entitled to it on merits, the logic behind the approach being that the rights having implications on third parties, cannot be enforced when the applicant approaches the Court/Tribunal after expiry of the prescribed period of limitation. If, on account of the relief claimed by the applicant, a settled seniority is likely to be disturbed or someone is likely to lose the promotion or the promotional grade already granted to him, the Court would apply the law of limitation and deny relief to a person who has not been vigilant in seeking enforcement of his rights. But, where the wrong caused to a person is a recurring/continuous wrong and no other person is likely to be prejudicially affected on account of grant of relief sought by him, the Court/Tribunal would not be justified in denying the relief to which the applicant is otherwise entitled on merits, merely on ground of limitation.*

8. Having heard learned counsel for the petitioner, perused the impugned order and considered the decisions relied upon by the petitioner, we are of the view that there is no merit in the submission of the petitioner, and there is no reason to interfere with the impugned order.

9. The submission of the petitioner that the cause of action of the petitioner is a continuing one has no merit. The petitioner was superseded by his juniors in the year 1991. Assuming that he was not aware of the fact that his juniors had superseded him, he would have learnt of the said fact at least on 16.05.1994 when the seniority list was prepared. Thus, his cause of action would have arisen from the said date. In fact, he has stated without giving any particulars that his other juniors were also promoted subsequently ignoring his name. Even then, he did not agitate against violation of his alleged rights.

10. The submission that no person would be affected if the relief prayed for is granted, namely, the ante dating of his promotion as Head Constable with effect from 16.06.1991 is equally fallacious. To grant the said relief, the seniority list in the grade of Head Constable would have to be recast. Merely because others who were earlier promoted may have retired, is no reason to grant the relief to the petitioner. There could not have been two incumbents on the same post. The State had already promoted and borne the salary of others who were promoted for the relevant period. The petitioner cannot even notionally claim promotion in respect of the same posts which were occupied by others at the relevant time and seek any relief on that premise.

11. The decisions relied upon by the petitioner are clearly inapplicable in the facts of the present case. In fact, *Tarsem Singh* (supra) itself observes that if the claim involves issues relating to seniority or promotion etc. affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Similarly, in *R.K. Kapoor* (supra), the same principle has been applied by the Court.

12. For the aforesaid reasons, we find no merit in this petition. Dismissed. However, the costs imposed upon the petitioner stands waived.

**VIPIN SANGHI, J**

**I.S. MEHTA, J**

**SEPTEMBER 15, 2017 sr**