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

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Date of Decision: 03.08.2017

% **LPA 15/2016**

ANIL KUMAR ANAND Appellant

Through: Appellant in person.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Ramesh P. Bhatt, Senior Advocate along with Mr. Sanjeev Kumar, Mr. H.K. Naik, Mr. Rajnish & Mr. P.S. Nerwal, Advocates for respondents No.2, 3 & 5.

Mr. Rajiv Kapur & Ms. Sristi Nigam, Advocates for respondent No.6/ SBI.

Mr. Venkatesawar Rao Anumolu, Advocate for respondent No.9/ LIC.

Ms. Mohna M. Lal & Ms. Geetali Talukdar, Advocates for respondents No.10 & 11.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The appellant has preferred the present Letters Patent Appeal to assail the judgment dated 02.11.2015 rendered by the learned Single Judge in W.P.(C.) No. 7114/2015, whereby the appellant's writ petition, inter alia, seeking quashing of the report of the Review Departmental Promotion

Committee (Review DPC) dated 09.01.2008 has been dismissed on the ground of delay & laches.

2. The factual background may be taken note of at this stage.

3. The appellant had earlier preferred W.P.(C.) No. 1067/1999 raising the grievance with regard to denial of promotion to him to Grade 'C' for the panel years 1994, 1995 and 1996, due to the penalty of reprimand inflicted upon him, in the year 1992. The said writ petition was allowed by the Court on 18.08.2006. The operative direction issued by the Court was that the respondent should hold the review DPC so far as the appellant is concerned, for promotion to Grade 'C' for the panel years 1994, 1995 and 1996, and consider his records afresh, after giving appropriate weightage for seniority and his ACRs.

4. The respondent UTI Asset Management Company Limited and Others preferred LPA Nos. 2262-2268/2006. In the said LPAs on 29.11.2006, while issuing notice to the respondent therein the Court directed that "*the process for consideration in terms of the order may continue, but no final order is required to be passed by the appellant till the next date*". On 15.11.2007, the Division Bench required the appellant in the said LPAs to inform the Court whether the case of the respondent (appellant herein) was considered in terms of the orders passed by the Court. The matter was adjourned to 10.01.2008.

5. On 20.03.2008, it was informed on behalf of the appellants that an advance copy of the affidavit along with the information shall be given to respondent No.1, i.e. the appellant herein, during the course of the day,

which would be filed in the Court before the next date. The respondent was granted two weeks time to file his response. The Court further observed that *“On receipt of the aforesaid information, it will be open to respondent No.1 to take remedy as deemed fit and proper”*. The interim order passed in the said LPAs was directed to continue, meaning thereby that the final order was not required to be passed by the appellants.

6. On 08.05.2009, it was informed on behalf of the appellants that the Review DPC was constituted in terms of the judgment of the learned Single Judge which has recorded that it is unable to recommend the respondent's name for promotion for the three years in question. It was also stated on behalf of the appellants that in view of the Review DPC's report, the appellants do not wish to press the appeals. Consequently, the appeals were disposed of with liberty to the respondent (appellant herein) to challenge the recommendations of the Review DPC, if so advised.

7. What followed thereafter was a set of representations by the appellant between the period 2006 to 2016 apart from three legal notices dated 23.12.2014, 26.01.2015 and 19.05.2015. The consistent stand of the respondent in all these representations and legal notices was that the recommendations of the Review DPC were not placed before the Competent Authority i.e. the Chairman-cum-Managing Director for his consideration. He claimed that even after withdrawal of the aforesaid LPAs of the respondent herein – and consequent vacation of the interim order dated 29.11.2006, the final order was not passed by the Competent Authority.

8. Eventually, the appellant preferred the aforesaid writ petition, which,

as noticed above, has been dismissed on the ground of delay and laches. In the writ petition, the averments made by the appellant, inter alia, are the following:

“31) The petitioner had his last meeting with Mr. U.K. Sinha on January 10, 2011, who had advised the petitioner to submit a fresh representation for the compliance of the directions issued by this Hon’ble Court in the judgment delivered on August 18, 2006 in CWP 1067/1999. The petitioner, accordingly, submitted a detailed representation on January 11, 2011 for his kind consideration. Mr. U.K. Sinha, however, left UTI AMC in mid-February, 2011 and joined the Securities and Exchange Board of India (SEBI) as its Chairman. A copy of the representation of the petitioner dated January 11, 2011, is annexed with 3 (three) legal notices as Annexure P-33 Colly.

32) That the process of the selection of the new Managing Director, took more than two and half years, during which the petitioner kept meeting the acting CEO, the then Chief Legal Advisor and the then Head HR, who all advised the petitioner to wait, till the new CMD was appointed and hopes of the petitioner were kept alive.

33) That the petitioner had also sent email to all the Directors on the Board of UTI Trustee Company Pvt. Ltd. and the UTI Asset Management Company Limited on June 4, 2013 for compliance of the said judgment dated August 18, 2006.

34) The petitioner, on June 6, 2013 also forwarded a copy of his aforesaid email dated June 4, 2013 to the Chairman / CMD of the four subscribers / sponsors of UTI AMC Ltd. i.e. State Bank of India, Punjab National Bank, Bank of Baroda and the Life Insurance Corporation of India, despite which, the judgment was not complied with.

35) That the petitioner also wrote to the representatives of M/s T. Rowe Price, Mr. Flemming Madsen and Mr. James Sellers Riepe, requesting for compliance of the directions issued by this Hon’ble Court in the judgment delivered on

August 18, 2006 in Civil Writ petition no. 1067/1999, despite which, the judgment was not complied with.

36) That Mr. Leo Puri was appointed as the Managing Director on August 14, 2013. By then the petitioner had already lost a total period of 7 years.

37) The petitioner, therefore, once again started from scratch and started representing to Mr. Leo Puri, for completing the process of review DPC and for issuance of the 'Final Order' on the recommendations of the Review Departmental Promotion Committee, in order to comply with the judgment dated August 18, 2006 passed in CWP 1067/1999. But the petitioner was informed about the reply of the Ombudsman dated 25th July 2013, wherein the Ombudsman, had advised the petitioner to approach the court of law, for seeking relief in the matter of non-promotion and non-issuance of the 'final order' on the recommendations of the review DPC.

38) That the Managing Director of respondent UTI AMC has not taken any decision in this matter, so far, nor has he even advised the petitioner, as to why the respondents are not issuing the 'Final Order' on the recommendations of the review DPC, which is pending."

9. He further stated in paragraph 41 of the writ petition as follows:

"41) That apart from several personal meetings, the petitioner had with the concerned officials of UTI AMC, the petitioner in the last 9 years has sent 28 requests through email and written representations, but the management of UTI AMC is defying the directions of this Hon'ble Court, in a most blatant manner."

10. The learned Single Judge while holding that the writ petition - wherein the appellant, inter alia, challenged the recommendations of the Review DPC was grossly barred by delay and laches, took note of the orders passed in the LPAs of the respondent, particularly the order dated 08.05.2009, wherein the appellant herein was granted liberty to challenge

the recommendations of the Review DPC, if so advised. The learned Single Judge held that since the Review DPC was held on 09.01.2008, which was also communicated to the appellant on 20.03.2008, it was open to the appellant to assail the said recommendations in a reasonable time. However, he had preferred the writ petition only in the year 2015, i.e. after a lapse of about seven years from the date of communication to him of the recommendations of the Review DPC.

11. The submission of the appellant before us is that the mere making of the recommendations by the Review DPC was not sufficient since the said recommendations had to be consciously considered by the Competent Authority, namely the CMD. He submits that it was open to the CMD to accept or reject, the said recommendations. He submits that the recommendations by themselves do not constitute a binding decision. He submits that it is for this reason that the appellant repeatedly sent representations and notices to the respondents to communicate to him the final decision, which was never done. He submits that the liberty granted to the appellant to challenge the recommendation of the Review DPC was that he may do so, if so advised. He submits that in view of the fact that the recommendations of the Review DPC were not placed before the Competent Authority, and no order was passed by him, much less communicated to the appellant, he bona fide kept representing to the respondents and waited for the final order/ decision. The appellant submits that since the final decision was not communicated to him even when he preferred the writ petition in the year 2015, the same could not be said to be barred by delay and laches.

12. On the last date of hearing, we had enquired from the respondents

whether, or not, the recommendations of the Review DPC were accepted by the Competent Authority, namely the CMD. Today, in Court, an additional affidavit has been tendered by the respondents. The said affidavit is sworn by Sh. R. Subramanian, the current Executive Vice President–HR of the UTI Asset Management Company Limited. In the affidavit, he states that:

“6. the recommendation of the review DPC dated 09.01.08 was brought to the kind knowledge/ attention of the then Chairman-cum-Managing Director of the Respondent No.5 Mr. U.K. Sinha, by me. I say that after going through the recommendation of review DPC, the then C.M.D. agreed with the said report dated 09.01.08 and gave a go ahead to inform/file the review DPC report dated 09.01.08 before the Hon’ble Division Bench of this Hon’ble Court.

7. I say that when the case came up for hearing on 20.03.08, the Hon’ble Division Bench inquired from the counsel for Appellant (Respondent No.5 herein) as to ‘whether the case for the respondent was considered in terms of the order passed by this Court on 29.11.06. The said information is still not on record..’.

8. I say that on 20.03.08, during the course of hearing, counsel for the Appellant (Respondent No.5) informed to the Hon’ble Division Bench that an advance copy of the affidavit alongwith the said information shall be given to the Respondent No.1 during the course of the day, which shall be filed before the next date. The Hon’ble Court also granted to the Respondent No.1 (Appellant herein) two weeks time to file his response to the said information, if any. I say that the liberty was also granted to the Respondent No.1 to take appropriate remedy on the receipt of the said information, as deemed fit and proper and interim order was directed to continue. A copy of orders passed by this Hon’ble Court in L.P.A. Nos. 2262-2268/2006 is annexed as Annexure A-1 (Colly).

9. I say that the report of review DPC was filed on the

record of L.P.A. Nos. 2262-2268/2006 alongwith a supporting affidavit. I further say that after the report of review DPC dated 09.01.08 was brought on record, the interim order passed by the Division Bench of this Hon'ble Court dated 29.11.06 (i.e. the process for consideration in terms of the order may continue, but no final order is required to be passed by the appellant) and continued from time to time was discontinued from the next date onwards. It is humbly submitted that the reference to 'final order' in order dated 29.11.06 was in respect of finality to consideration by the review DPC, in terms of order dated 18.08.06 passed by the ld. Single Judge in W.P. No.1067/1999.

10. I say that the relevant day to day proceedings/orders of L.P.A. Nos.2262-2268/2006 was brought to the kind knowledge/attention of the then CMD of the Respondent No.5. I say that the then CMD was well aware of the affidavit and review DPC report dated 09.01.08 filed by the Respondent No.5 before the Division Bench of this Hon'ble Court. I say that the then CMD of Respondent No.5 Mr. U.K. Sinha had concurred with the report of review DPC dated 09.01.08 and the stand taken by Respondent No.5 before the Hon'ble Division Bench in L.P.A. Nos.2262- 2268/2006 has full concurrence and backing of the then CMD of Respondent No.5."

13. A perusal of the statements made in the affidavit of Sh. R. Subramanian leaves no manner of doubt that there is no record available with the respondents to show that the recommendations of the Review DPC were placed before the CMD for his due consideration on the aspect as to whether, or not, the same should be accepted by him.

14. The statements made in the affidavit - to the effect that the recommendation of the Review DPC dated 09.01.2008 were brought to the kind knowledge/ attention of the then CMD Mr. U.K. Sinha by the deponent, cannot be accepted for two reasons. Firstly, the same is not

supported by the record, and secondly, even if it were to be assumed that the then CMD was informed of the recommendations of the Review DPC, the same does not tantamount to placing before him, for his due consideration, the said recommendations for the purpose of eliciting his decision whether, or not, to accept the same. At the highest, the statement made in paragraph 6 of the affidavit of Sh. R. Subramanian can be taken as an intimation of the recommendations made by the Review DPC to the then CMD, and nothing more.

15. Learned senior counsel for the respondents has also sought to produce the notes placed before the CMD, and in particular, the notes dated 11.07.2008 and 01.04.2009. A perusal of these notes shows that the same were signed by the then CMD contemporaneously. These notes merely record that the HRD had constituted a DPC comprising of the CLA, Head HR, P-Suuti Sh. B. Baburao, and that the DPC considered the seniority and ACR and all other facts and was unable to recommend the appellant for promotion. The notes also record that the recommendations of the DPC were placed before the Division Bench of this Court on 20.03.2008 and that the Division Bench had directed filing of an affidavit in support of the DPC recommendations, and to handover a copy of the same to the appellant herein.

16. These notes, which appear to have been signed by the CMD, do not tantamount to placing of the recommendations of the review DPC before the CMD for his consideration. These notes are, at the highest, only communications to the CMD of the history with regard to, inter alia, the making of the recommendations by the Review DPC; their placement before

the Court, and; communication of the same to the appellant. Pertinently, these notes do not even record that the recommendations of the Review DPC were, at the relevant time, placed before the CMD for his approval, or that such approval was obtained. They do not even record that the decision to place the recommendations of the Review DPC before the Division Bench was taken by, or with the approval of the CMD.

17. No doubt, the appellant was informed by the Ombudsman appointed by the respondent vide communication dated 25.07.2013 that: *“UTI did not deem it necessary to issue any communication to him as he was already advised of the UTIs stand through the copy of the affidavit served on him and also the pronouncement of High Court of Judicature. In fact, he argued his own case as an Advocate and was fully in the know of things. Therefore it is not correct to state that no action was taken for so many years by UTI as he was very much aware of the pronouncement of the Court and could have challenged the alleged non-compliance with the Court order, legally as early as 6 years ago, instead of insisting upon a communication from UTI which anyway was provided to him in the form of a copy of the affidavit.”*. However, the aforesaid communication does not take away from the fact that the Competent Authority, namely the CMD of the UTI Asset Management Company Limited did not apply his mind to, and take a decision on the recommendations of the Review DPC, and the said decision was never communicated to the appellant.

18. The submission of Mr. Bhatt is that the practice routinely followed in the respondent UTI AMC Ltd. is that only if the DPC recommends the promotion of the candidate(s), the requisite orders are issued, giving effect

to the same. However, if the DPC does not recommend the promotion, no further communication is undertaken with the concerned employee.

19. Even if this submission is accepted, there is no denying the fact that what the DPC makes are only the recommendations, and the same is not the final decision. The recommendations – whichever way they may be, are placed before the Competent Authority. It is for the Competent Authority to accept, or reject the same. He may even seek the reconsideration of the same. Thus, mere non-communication of the decision – where the DPC does not recommend the promotion and the said recommendation is accepted by the Competent Authority, does not mean that there is no decision taken by the Competent Authority on the file after due application of mind.

20. The submission of learned counsel for the respondents is that in the writ petition, there is no direction sought by the appellant to require the Competent Authority to consider the recommendations of the Review DPC and to communicate his decision thereon. The challenge is to the recommendations of the Review DPC, which could have been raised in the year 2008 itself – when the said recommendations were communicated to the appellant in the earlier LPAs. The submission is that without the said relief, the writ petition was highly belated.

21. Learned senior counsel for the respondents has sought to place reliance on *Pundlik Jalam Patil (Dead) By LRs Vs. Executive Engineer, Jalgaon Medium Project & Another*, (2008) 17 SCC 448, in support of his submission that highly belated and stale claims should not be entertained in

writ proceedings. Particularly, he places reliance on paragraph 17 of this decision, which reads as follows:

“17. The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is: Can the respondent applicant in this case take advantage of its negligence, after a lapse of number of years, of the decision of the Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and “do not slumber over their rights”.”

22. Reliance is also placed by the respondents on ***Union of India & Others Vs. Tarsem Singh***, (2008) 8 SCC 648, and in particular paragraph 7 thereof, which reads as follows:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue

would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

23. No doubt, the appellant has not sought any relief to seek a direction to the Competent Authority to consider the recommendations of the Review DPC. However, the fact that the said recommendations were not considered by the Competent Authority, and no decision was taken by him thereon, is the reason given by the appellant for not approaching the Court earlier, since he was awaiting the said decision to be taken by the Competent Authority, for which he continued to make representations over the years.

24. In our view, in the facts & circumstances of this case, it can be said that the appellant bona fide continued to wait for the taking of, and communication of, the decision by the Competent Authority on the recommendations of the Review DPC, to him. After all, he had obtained the directions for holding of the Review DPC after a hard and long legal battle. There was no advantage to be derived by the appellant by delaying the challenge to the recommendations of the Review DPC.

25. The decisions relied upon by the respondents, in our view, cannot be pressed into service in the facts of the present case, since the issue was kept

alive by the appellant throughout. It cannot be said that the appellant allowed his claims to lapse. The same is evident from the fact that he has been litigating in relation to denial of promotion to him since February, 1999.

26. The appellant has also pointed out that the minutes/ proceedings of the revised DPC proceed on an erroneous factual basis. In this regard, he has not only drawn our attention to the said proceedings of the review DPC, but also to the orders dated 28.10.2002 and 22.05.2004 passed in his earlier writ petition i.e. W.P.(C.) No. 1067/1999. These are aspects touching on the merits of the appellants case. We are not delving into the same, as the learned Single Judge has not examined them and the scope of the impugned judgment is limited to the aspect of delay and laches. However, having got a flavour of the appellants case, we are of the view that the appellant is entitled to have his day in the sun to be able to place his case on merits, and he did not deserve to be shut out on the grounds of delay and laches. Of course, if the Court finds merit in the appellant's claim, while granting him relief, the passage of time would be kept in mind by the Court.

27. Accordingly, the present appeal is allowed and the impugned judgment is set aside. The matter is remanded back to the learned Single Judge for decision of the writ petition afresh on merits.

28. In the impugned decision, the learned Single Judge has observed in respect of several reliefs, which are not related to the challenge to the Review DPC recommendations, that they may be raised separately by the appellant. The appellant points out that apart from prayers 'a' to 'g', 'j' and

‘k’, the reliefs prayed for at ‘i’, ‘o’ & ‘p’ also stem out from the same cause of action, and they should also be considered within the scope of the writ petition. We leave it open to the appellant to raise this submission before the learned Single Judge. After hearing the appellant, if the learned Single Judge is of the view that the said reliefs are consequential to the main relief sought in the writ petition, the said reliefs may also be considered within the scope of the writ petition.

29. It goes without saying that in respect of other reliefs, the appellant’s liberty to prefer independent remedy is preserved.

30. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J.

REKHA PALLI, J.

AUGUST 03, 2017

B.S. Rohella