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

+ W.P.(C) 4166/2018 & CM No.16355/2018 (exemption)

DEEPAK SAXENA

..... Petitioner

Through: Mr.M.C.Jha & Mr.S.K.Tripathi,
Advocates

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

THROUGH: ITS CHAIRMAN

..... Respondent

Through: Ms.Kanika Tandon &
Ms.Madhu Sweta, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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25.04.2018

1. The petitioner is aggrieved by the order dated 24.01.2018, passed by the Central Administrative Tribunal, dismissing M.A.No.2450/2017, for seeking condonation of delay in filing O.A. No.1298/2017, and the consequent dismissal of the said application.

2. Learned counsel for the petitioner submits that the petitioner was appointed as a Manager (P&IS) with the respondent/National Highway Authority of India (NHAI) in the year 1999 and was promoted to the post of Dy.GM (P&IS) in the year 2003. Though he was eligible for the next stage of promotion to the post of GM (P&IS), in the year 2008, another officer was posted on deputation.

In the year 2010, an advertisement was issued for selection to the post of GM (P&IS). The petitioner applied for the said post but he did not receive any call for interview. Thereafter, he sent a representation dated 17.02.2012, but received no response from the respondent. The petitioner adopted the RTI route to gather necessary information from the respondents. On 30.10.2012, he was informed that his qualifications were found inadequate for the post of GM (P&IS) by the Screening Committee.

3. The petitioner obtained a certificate from IIT, Kanpur, for clarifying that he possessed the necessary qualifications to the subject post. He continued representing to the respondent/NHAI reiterating his request for promotion to the subject post from the year 2007 onwards. Vide order dated 16.12.2014, the petitioner took charge on the post of GM (Electronics) on the repatriation of the deputationist to his parent cadre. The vacancy to the post of GM (P&IS) was again advertised on 07.04.2015 and the petitioner was promoted to the said post w.e.f. 11.12.2015.

4. After promotion to the said post, the petitioner started making representations to the respondents claiming notional promotion and restoration of his lost seniority of 6 years and 8 months in the cadre of GM (P&IS), w.e.f. March, 2009 along with consequential monetary benefits, on the ground that his application for the post of GM (P&IS), against the vacancy advertised in the year 2008, had been wrongly rejected by the Screening Committee, despite the fact that he was eligible having completed the required minimum period of service in the feeder cadre, in the year 2007 itself. The said representation of the

petitioner was rejected on 20.12.2016.

5. Aggrieved thereby, the petitioner filed O.A. No.1298/2017 for directions to the respondent/NHAI to promote him notionally to the post of GM (P&IS) w.e.f. March, 2009 and restore his lost seniority of 6 years and 8 months and also grant him monetary benefits w.e.f. March, 2009. Along with the said O.A., the petitioner filed an application seeking condonation of delay of 900 days in filing the O.A., which has been dismissed by the Tribunal by order impugned.

6. Learned counsel for the petitioner submits that delay of 900 days in filing the O.A. was for the reason that the petitioner had been making representations to the respondent/NHAI and was awaiting a response.

7. The above submission is, however, not borne out from the record. In his application for seeking condonation of delay before the Tribunal, in M.A. No.2450/2017, the following reasons were given for explaining the delay in availing the legal remedy:

(i) The petitioner kept on discussing the case with the top management and was getting an assurance that he would be promoted soon.

(ii) His request for disposal of his representation and a communication to him officially in writing, was not acceded to by the respondent.

(iii) That the eerie silence on the part of the respondent for a long period of around 1344 days, caused uncertainty in the mind of the petitioner regarding his case for promotion to the post of GM (P&IS) and he was in a dilemma as to whether he should approach the court

and if yes, what should he challenge as he had not received a reply till 20.12.2016, in terms of the advice of his friends and colleagues.

8. It is an admitted case of the petitioner that when he was not called for the interview in the year 2009 and 2012, he did not seek legal recourse. After he obtained the information through the RTI route that he did not have the requisite qualifications to be considered for the post of GM (P&IS), in the year 2013, he approached IIT, Kanpur for a certificate to establish his eligibility on the basis of his qualifications, for the post of GM (P&IS).

9. Section 21 of the Administrative Tribunals Act, 1985, prescribes the period of limitation for approaching the Tribunal, which is extracted hereunder:

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.

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10. O.A. 1298/2017 has been dismissed by the Tribunal by refusing to condone the delay of 900 days in filing the original application with the following reasons:

“2. Even if the facts mentioned in the condonation Application are accepted in toto, the applicant got the information on 15.02.2013 that he is duly qualified and he made a representation on 09.04.2013. The representation was admittedly not decided. In terms of Section 21 of the Administrative Tribunals Act, 1985, limitation would commence on expiry of six months from the date of making representation. Thus, the limitation of one year would commence from October, 2013 and expire in 2014. There is no explanation thereafter. Any assurance, which is said to be made, is of no consequence, particularly when said assurance is not there. We do not find any valid reasons to condone the delay of about 3 years. This condonation Application is accordingly dismissed and consequently the O.A.”

11. We are of the considered view that merely because the petitioner was making representations could in itself not be a ground to justify the inordinate delay in approaching the Tribunal for relief, which period as per the averments made in the application, is of 900 days. It is a settled legal position that exercise of discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, this Court may decline to intervene in exercise of its writ jurisdiction. In State of Orissa vs. P.Samantaraj, reported as **AIR 1976 SC 2617**, making of repeated representations was not regarded as a satisfactory explanation of the delay.

12. We are also not convinced by the explanation offered by the petitioner for the delay in approaching the Tribunal. If the petitioner was of the view that he was eligible and possessed the requisite

qualifications for selection to the post of GM (P&IS), in the year 2009, when he was not even called for an interview, then he should have taken immediate steps to get the cloud dispelled on his qualification and eligibility for the said post. However, the petitioner obtained necessary clarifications from IIT, Kanpur only in the year 2013 and thereafter too, except for making repeated representations, he did not seek legal recourse. The Tribunal was, therefore, justified in refusing to condone the delay of about 3 years in filing the original application, as the prescribed period of limitation had expired as long back as in the year 2014.

13. The petition is accordingly dismissed, along with the pending application.

HIMA KOHLI, J.

PRATIBHA RANI, J.

APRIL 25, 2018

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