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

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Date of Decision : 04.12.2018

+ **W.P.(C.) No. 4686/2018**

SHRI M. Y. QURESHI Petitioner

Through: Ms. Meenu Mainee, Adv.

versus

UNION OF INDIA THROUGH SECRETARY RAILWAY BOARD
& ORS. Respondents

Through: Mr. J.K. Singh, Standing Counsel
with Mr. Harsh Pandit, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K.CHAWLA, J. (ORAL)

1. The Petitioner, feeling aggrieved of the order dated 21.11.2011 passed by Central Administrative Tribunal, Principal Bench, New Delhi in short, 'CAT', whereby, an OA no. 1100/2015 filed by the petitioner seeking consideration of his case and consequential interpolation of his name in the panel for the selection to the post of Asstt. Commercial Manager in short,

'ACM', was dismissed on the ground of limitation as well as merits, has preferred the instant writ petition.

2. Concisely, the relevant facts are that in the year 1994-95, Railway Recruitment Board, Mumbai in short 'RRB' started process for selection to the post of ACM in the pay scale of ₹2000-3200. Selection was to be made on merit-cum-seniority basis and the zone of consideration was to include the employees from different streams of the railways applying the provisions of paras 203.4 and 203.5 of Indian Railway Establishment Manual, Volume I, 1989 Edition in short, 'IREM-I'. The petitioner, who had initially joined as a Commercial Clerk in the year 1993 and at the relevant time was Divisional Commercial Inspector in the pay scale of ₹2375-3500 applied for being considered to the post of ACM. His such application was not considered by the respondents and on that, he made representations for being considered. It was his contention that he was the senior most Group 'C' employee in the pay scale of ₹2375-3500 and therefore, eligible for selection to the post of ACM, which was a Group 'B' post in the pay scale of ₹2000-3200. It was also his plea that para 203.5 of IREM-I did not prohibit participation of Group 'C' employees in the pay scale of ₹2375-3500 to the post of ACM inasmuch as the post of ACM was in the lower pay scale of

₹2000-3200. Besides that, the petitioner also took the plea that his case was similar to the case of *Sarwar Ali*, who was granted the relief. Non-consideration of his representation by the respondents resulted into filing of the OA, which has come to be dismissed by CAT. Petitioner has now approached this court by way of the instant writ petition.

3. CAT has refused to entertain the application made by the petitioner on the grounds of limitation as well as on merits. On the count of limitation, CAT has taken note of the fact that the petitioner has approached it after about 10 years of the purported cause of action having arisen in his favour inasmuch as the process of selection was started in the year 1994-95 and even when counted from the date of its decision in OA no. 723/2008 *Sarwar Ali vs. Union of India* decided on 05.12.2008, it was highly belated. On the aspect of limitation, the provisions of Sections 20 and 21 of the Administrative Act, 1985 in short, 'The Tribunal Act' are attracted, which read, as under :

"20. Applications not to be admitted unless other remedies exhausted -

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

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 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.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance

had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

A plain reading of the above-said provisions of 'the Tribunal Act' leave no doubt that the application made by the petitioner before CAT in the year 2015, in relation to a cause of action that arose sometime around the year 1994-95, was highly belated. Suffice to say, it is the own case of the petitioner that for the cause of action having arisen in the year 1994-95 or thereabout, he had made a representation for the redressal of his grievance around that time only. Having made such representation, in the event no decision had come to be taken on the representation so made, the application could be made within one year from the date of expiry of six months of making such representation. We also observe, on the given subject of his non-consideration in the process of selection to the post of ACM, he apparently approached CAT only at the age of 67 years after his

superannuation inasmuch as, as per the affidavit accompanying the writ petition, he is aged 70 years. The proceedings initiated thus also appear to be calculated and not bonafide. Be that as it may, the process for selection having been concluded long time before and CAT in *Sarwar Ali's* case, having though observed that para 203.5 of IREM-I did not prohibit consideration of Sarwari Ali for selection to Group 'B' post, but without disturbing the selection already made, in our considered, the OA made by the petitioner in the year 2015 had lost its significance even on merits, if any.

4. In view of the foregoing, the petition is dismissed. No order as to costs.

A.K.CHAWLA, J.

VIPIN SANGHI, J.

DECEMBER 04, 2018

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