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

Date of Decision: 11.10.2019

+ W.P.(C)10811/2019
MUKHTIAR SINGH

..... Petitioner

Through: Mr. Anoop P. Awasthi, Adv.
versus

UNION OF INDIA

..... Respondent

Through: Mr. Krishnendu Datta,
Mr. Manish Srivastava, Ms.
Mehak Khurana & Mr. Rijul
Taneja, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

CM APPL. No. 44714-44715/2019 (exemptions)

Allowed, subject to all just exceptions.

The applications stand disposed of.

W.P.(C)10811/2019 & CM APPL. No. 44716/2019

The petitioner is aggrieved by order dated 04.07.2018 passed by the Central Administrative Tribunal ('Tribunal') by which the O.A. filed by the petitioner was dismissed primarily on the ground of it being barred by limitation.

2. In this case, the petitioner was appointed to the post of Assistant Comptroller of Accounts on 01.01.2006 ; and it is claimed that he was eligible to be considered for promotion to the post of Deputy

Comptroller of Accounts in Senior Time Scale. The petitioner was scheduled to superannuate on 30.04.2006.

3. Accordingly, the petitioner requested the department to convene a Departmental Promotion Committee ('DPC') before the said date. However, the petitioner states till the time the petitioner superannuated, a DPC was not convened. Post his retirement on 30.04.2006, the petitioner made a representation on 17.07.2006 seeking notional promotion *w.e.f.* 01.01.2006 ; but this representation was also rejected on 16.11.2006.

4. Thereafter, the petitioner approached the National Commission for Scheduled Castes ('Commission') on 08.01.2007 seeking relief for the same grievance. The matter remained pending before the Commission for a period of 8 years ; and thereafter a speaking order was passed on 12.08.2015. The respondent however expressed their inability to comply with the order of the Commission. Another representation made by the petitioner before the Commission was also rejected on 05.07.2017 ; following which the petitioner approached the Tribunal by way of the O.A.

5. The grievance of the petitioner is that the Tribunal has rejected his OA only on the ground of being barred by limitation, without deciding the matter on merits.

6. Learned counsel for the respondent has entered appearance on advance copy. Learned counsel submits that a reading of the impugned order would show that the grounds for delay have been duly considered in para 5, where the Tribunal has noted that the applicant,

being the petitioner herein, had retired way back on 30.04.2006. He made a representation to his department on 17.07.2006; his request was turned down on 16.11.2006; and the OA filed in 2017 could not have been entertained after a gap of 11 years.

7. At this stage, we have asked counsel for the petitioner to elaborate the grounds for seeking condonation of delay. Learned counsel submits that almost a decade was spent before the Commission; and thus it cannot be said that the petitioner was responsible for the delay or that he was careless in not having pursued his remedies. He further submits that the final representation of the petitioner was rejected by the Commission on 05.07.2017 and the petitioner approached the Tribunal soon after, on 19.07.2017.

8. Learned counsel for the respondent has relied upon the judgment in the case of ***Union of India & Ors. vs. M.K. Sarkar*** reported as (2010) 2 SCC 59, para Nos. 14 & 15 of which read as under :

“14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob v. Director of Geology and Mining :

“9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any ‘decision’ on rights and obligations of parties. Little do

they realise the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

9. The facts recorded in the foregoing paras are not disputed; it is not disputed that the petitioner superannuated on 30.04.2006 ; it is also not in dispute that the representation was made by him soon after his retirement on 17.07.2006 ; and that the O.A. was filed only in 2017.

10. The fact of the petitioner having approached the Commission and the matter having remained pending there for a period of 8 years, in our view, cannot extend the period of limitation for inviting the petitioner's legal remedy before the Tribunal. Moreover, the cause of action in this case arose when the first representation made to the department was rejected as far back on 16.11.2006; and not when the representations were made before the Commission in 2007 or 2017.

11. We may observe that the view taken in ***M.K. Sarkar*** (supra) that decisions on representatives made on 'stale' claims do not furnish a fresh cause of action has been followed even recently in the case of ***Union of India & Ors. vs. C. Girija & Ors.*** reported as 2019 SCC Online SC 187, in which case the Supreme Court has held under :

“17. On the preposition as noticed above, it is clear that the claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on 25.09.2007, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim. Both Tribunal and High Court did not advert to this important aspect of the matter. It is

further to be noted from the material on record that after declaration of panel on 09.01.2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With regard to her non-inclusion in panel in 2005 selection, she also filed O.A. No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out.”

12. In the above view of the matter, we find no infirmity in the order passed by the Tribunal; and therefore no merit in the present petition.

13. The present petition and the application are accordingly dismissed.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 11, 2019/uj