224 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21114 of 2015 (O&M)
DATE OF DECISION:26.02.2020

J. D. SANDHU

...Petitioner

Vs.

THE CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH BENCH AND OTHERS

...Respondents

CORAM:- HON'BLE MR.JUSTICE JASWANT SINGH
HON'BLE MR.JUSTICE LALIT BATRA

Present: Petitioner-J. D. Sandhu in person.

Mr. Brijeshwar Singh Kanwar, Standing Counsel for Union of India.

LALIT BATRA, J.

This writ petition in the nature of writ of certiorari has been filed by petitioner-J.D.Sandhu for quashing of order dated 25.10.2013 (Annexure P-2) rendered by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter to be referred to as "Tribunal"), in Original Application No.PB-729 of 2013 titled "J. D. Sandhu v. Union of India, and another" (hereinafter to be referred to as "OA"), vide which petitioner had challenged the order dated 28.07.2010 (Annexure P-12) passed by respondent No.2 whereby the promotion to the post of Inspector "Selection

Post" was denied to the petitioner and the senior candidates were promoted, thus, said application was dismissed by the Tribunal. Further, petitioner has challenged the order dated 01.05.2014 (Annexure P-5) rendered by the Tribunal, in terms of which, Review Application No.110 of 2013 moved by petitioner for review of order dated 25.10.2013 (Annexure P-2), has been dismissed.

2. Petitioner's case in brief is that he joined respondent-Department as Lower Division Clerk (LDC) on 14.06.1965 and earned various promotions as Upper Division Clerk (UDC) on 30.12.1969, Tax Assistant on 10.08.1978, Head Clerk on 21.07.1983, Supervisor on 19.05.1988, Inspector Income Tax on 19.08.1988 and Income Tax Officer on 13.05.1996 and retired as such on 31.05.2005. Initially petitioner had filed a representation dated 10.12.1990 seeking promotion as Inspector Income Tax with effect from 05.06.1984, however, said representation was rejected by the Chief Commissioner of Income Tax, vide letter dated 26.03.1991. Thereafter O.A. No. 662 of 1991 was filed by the petitioner on 31.05.1991 which was decided by the Tribunal, vide order dated 11.10.1999 and directions were given to respondent No.3 as under:-

> *"In the circumstances of the instant case, we think it proper to direct the respondent no.4 the Commissioner of Income Tax, Patiala to consider the representation of the applicant and dispose of the same within a period of two months from the date of receipt of this order by speaking order and after hearing the applicant. In case the applicant still feels aggrieved, he will be at liberty to approach this Tribunal."*

Thereafter, Commissioner of Income Tax, Jalandhar, vide letter dated 07.04.2000 informed the petitioner as under:-

> *"It is conveyed that the contention with regard to early promotion as advanced by you have been carefully considered and noticed that the Recruitment Rules of the Inspector of Income Tax and number of judgments etc. quoted by you are found to be without pointing out it any way specifically as to in what manner any of your rights has been adversely effected by the action of the Department. You have also not given any instance for effecting your promotion due to Departments action. The Department has been following prescribed procedure in implementing the Recruitment Rules and the Reservation Policy in letter and spirit.*
>
> *It is also conveyed that since you have not been able to make out any cogent case. Your representation appears to be misconceived and in the circumstances, having no option, your representation has been rejected by the Chief Commissioner of Income, Chandigarh.*
>
> *I am further directed to inform you that your case can however be considered in case you make out a clear-cut case bringing out the injustice done to you on the matter."*

Another representation filed by the petitioner (after a gap of more than nine years) was disposed of on 28.07.2010. Thereafter, petitioner had filed an O.A. No.898-PB-2010, claiming promotion as Inspector Income Tax from the earlier date before the Tribunal, which too was dismissed on 06.09.2011. The petitioner had challenged the decision of the Tribunal by filing CWP No.21822 of 2012, which came to be disposed of on 11.03.2013 by granting liberty to the petitioner to approach the Tribunal again. While challenging the date of his promotion as Income Tax Inspector, petitioner has averred that as per Column No.11 of the Income Tax (Inspector) Recruitment Rules, 1969, Upper Division Clerks and Higher Ministerial Grade, Stenographers (Ordinary Grade) and Stenographers (Selection Grade) with three years service in the respective grade, who have qualified the Departmental Exam for Inspector, are eligible for promotion and the names of all the qualified persons will be arranged in two separate lists. In the first list, the names of all the qualified persons will be arranged in order of their seniority in the Department, whereas in the second list, the names of all the qualified persons will be arranged according to the date/year of passing of Departmental Exam, provided that the persons who passed the examination on the same date, will be arranged according to their seniority in the Department. After the approval of the persons in the said lists by the DPC, the names of all the selected candidates will be embodied in two separate select lists and the vacancies in the promotion quota will be filled alternately from the two lists. In this regard, the petitioner has questioned whether the quota fixed for promotion for the post of Inspector of Income Tax on the basis of seniority is valid. Further it is averred that in terms of various judgments, the Rules laid down for the promotion to the post of Inspector of Income Tax which is a selection post on the basis of seniority are not valid and the promotions should have been made on the principle of merit-cum-seniority and the principle that roster points are seniority points. Petitioner has also claimed that percentage of reservation is fixed in respect of particular cadre and roster indicates the roster points, then it has to be taken that posts shown at reserved points are to be filled from amongst the members of the reserved categories and the candidates belonging to the general category are not entitled to be considered for the reserved points. On the other hand the reserved category candidates can compete for non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Petitioner has questioned whether the policy of reservation made by the Government under the Constitution is being implemented by the respondents. Apart from that petitioner has also challenged the working of DPC. Thus, petitioner has claimed promotions in the manner as detailed above.

3. Respondents in their reply have categorically contended that previously petitioner had filed O.A. No.898-PB-2010 before the Tribunal, claiming promotion as Inspector from the earlier date, which was dismissed on 06.09.2011. Thereafter petitioner had challenged the decision of Tribunal by filing CWP No.21822 of 2012, which was disposed of on 11.03.2013 while granting liberty to the petitioner to approach the Tribunal again. It is also contended that petitioner's representation pursuant to earlier directions had already been rejected on 07.04.2000 and another representation filed by the petitioner after a gap of more than nine years was disposed of on 28.07.2010. It is further contended that petitioner had filed original application claiming promotion as Inspector of Income Tax with effect from 05.06.1984 and further

promotion as ITO, ACIT and DCIT alongwith pay and allowances but in the said application he had not impleaded the persons likely to be affected by a decision in his favour and further did not render any explanation as to why they were not necessary parties. The said O.A. was dismissed on the grounds of limitation and non-impleadment of necessary parties. As a matter of fact petitioner had approached the Tribunal after a period of 26 years seeking promotion as Inspector of Income Tax with effect from 05.06.1984 and further seeking exchange of carried forward vacancies of STs for the recruitment years 1974, 1975, 1976 and 1977 after a gap of 33 years and as such cause of action, if any, accrued in favour of petitioner in the year 1984 and seeking claim of said benefit by filing the O.A. in 2010, said claim is barred under Section 21 of The Administratives Tribunals Act, 1985 as well as delay and latches. It is also contended that promotion to the post of Inspector of Income Tax had been made by following Income Tax Department (Inspector) Recruitment Rules, 1969 (as amended in 1986), which were prevalent at the relevant time. It is further contended that the seniority of the SC/ST candidates has been correctly determined and the roster points are not the seniority points as these points do not determine seniority. It is further contended that DPCs were held as per guidelines and petitioner was rightly promoted and given seniority as per rules and no reserved vacancy is filled from unreserved candidates. In this manner, respondents have categorically denied the claim of petitioner and prayed for dismissal of petition.

4. In replication petitioner has controverted the contentions of

respondents and re-affirmed his claim as set up in the petition.

5. We have heard petitioner in person and learned counsel for respondents and have carefully gone through the record of the case.

6. Petitioner has reiterated his cause as mentioned in the petition, whereas on the other hand, learned counsel for the respondents has laid much emphasis on the aspects of limitation and non-impleadment of necessary parties.

7. Regarding aspect of controversy as to whether petitioner has come to the Court within requisite period of limitation, it is observed that O.A. was instituted by the petitioner on 10.04.2013 seeking relief that he is entitled to promotion as Inspector Income Tax w.e.f. 05.06.1984. Petitioner was promoted as Inspector Income Tax in 1988 in accordance with extent rules regarding two lists being prepared, one on the basis of seniority and the another on the basis of date of having passed the Departmental Examination that was required to be cleared before a person could be considered for promotion. It is pertinent to mention here that when the promotions were effectuated in the year 1988, in that circumstance, petitioner cannot challenge those promotions and that too after lapse of more than 25 years. Though petitioner has given details of time frame commencing w.e.f. 5.6.1984 to 20.9.2012 spent for the cause as enshrined in the instant petition so as to bring his matter within ambit of limitation but in a given scenario, claim of petitioner appears to be hopelessly time barred. The law is well settled that the period spent in filing representations and disposal of the same as well as in collecting

information required for filing of a case cannot be computed while calculating as to whether a particular application is within limitation or not. It is pertinent to mention here that no application for condonation of delay has been filed by the petitioner. Hon'ble Supreme Court in case ***C. Jacob v. Director of Geology and Mining and another*** (2008)10 SCC 115, while dealing with the concept of representations and the directions issued by the Court or Tribunal to consider the representations and the challenge to the said rejection thereafter, in that context has observed as under: -

> *"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."*

Further in case ***Union of India and others v. M.K. Sarkar***, (2010) 2 SCC 59, Hon'ble Supreme Court, after referring to C. Jacob's case (supra) has ruled that 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.

Above said principle has been reiterated by the Hon'ble Supreme Court in case ***State of Uttranchal and another v. Sri Shiv Charan Singh Bhandari and others*** 2013 (12) SCC 179.

From the aforesaid authorities it is clear as crystal that even if the Court or Tribunal directs for consideration of representations relating to a stale claim or dead grievance, it does not give rise to a fresh cause of action.

In case ***New Delhi Municipal Council v. Pan Singh and others*** (2007) 9 SCC 278, Hon'ble Supreme Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the Court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

Further in case ***P.S. Sadasivasway v. State of Tamil Nadu*** (1975) 1 SCC 152, Hon'ble Supreme Court has laid down that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

In view of above and Section 21 of The Administrative Tribunals Act 1985, wherein a period of limitation has been prescribed for Tribunal to admit an application, it is observed that the petitioner who has spent at least 25 years before taking shelter of Tribunal, in this scenario cause of petitioner cannot be entertained being hopelessly time barred. Anyone who sleeps over his right is bound to suffer.

8. Regarding aspect of controversy as to whether petitioner has impleaded necessary and proper parties, it is observed that petitioner has not impleaded the persons who were promoted earlier to him as Inspector Income Tax and over whom he would gain seniority, in case his petition succeeds. Moreover, petitioner did not make any effort to implead Mewa Ram to whom he claims was not due for promotion as Income Tax Officer at the time when he actually got promotion. In this view of the matter, instant petition is bad for non-joinder of necessary and proper parties.

9. There is another material aspect which goes to the root of the

case and the same pertains to the fact that petitioner was promoted as Inspector Income Tax under the Income Tax (Inspector) Recruitment Rules, 1969 (as amended in 1986). Petitioner has never challenged the promotion on the basis of seniority claiming that the post of Income Tax Inspector is to be filled by selection and not by seniority and, therefore, claimed earlier date of promotion of 05.06.1984. However, since the promotions have been effected as per the Rules, these promotions cannot be challenged by the petitioner without having challenged the Rules and that too at belated stage for such challenge to be mounted.

10. It is pertinent to mention here that the claim of the petitioner to earlier promotion as ITO is based on two premises. First aspect relates to his claim for earlier date of promotion as Income Tax Inspector and since his promotion as Inspector Income Tax took place in accordance with the Rules, the claim of petitioner, challenging his promotion made on the basis of the seniority list of Inspectors is without merit. Second aspect pertains to relating to date of holding of the DPC. Again, there is no irregularity in considering the vacancies relating to additional posts of ITO that were sanctioned during the year along with other posts and as such petitioner cannot unsettle the scenario when he actually got the promotion as ITO.

11. As a sequel to above said findings, it is held that Central Administrative Tribunal, vide its order dated 25.10.2013, has rightly dismissed OA No.729-PB-2013 and further vide order dated 01.05.2014 has rightly dismissed Review Application No.110 of 2013 in OA No. 729-PB-2013 moved by petitioner and as such said findings are sustained. In

this view of the matter, instant writ petition moved by petitioner being devoid of merits is dismissed.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

26.02.2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No