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

Date of Decision: 29th January, 2020

+ W.P.(C) 942/2020 & CM APPL. No. 3020/2020

SH. BABU LAL

..... Petitioner

Through: Mr. S.S. Tiwari, Adv.

versus

COMMISSIONER, SOUTH DELHI MUNICIPAL
CORPORATION AND ANR.

..... Respondents

Through: Mr. B.S. Dhir & Ms. Yashika
Vij, Advs. for SDMC.

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)

The petitioner is aggrieved by order dated 21.12.2018 passed by the Central Administrative Tribunal ('Tribunal') by which O.A. No. 953/2015 filed by the petitioner has been rejected on the ground of delay and latches.

2. Learned counsel for the petitioner submits that this case is covered by order dated 05.06.2009 rendered by the Tribunal in the case of *Shashi & Ors. vs. Commissioner & Ors.*, TA No. 163/2009, where identical question had arisen.

3. It is further contended that the order of the Tribunal is an order *in-rem*. Counsel also submits that the order of the Tribunal was

assailed before the High Court and the writ petition was dismissed *vide* order dated 07.09.2009; against which SLP was filed, which was also dismissed *vide* judgment dated 20.01.2015.

4. Learned counsel for the petitioner submits that the delay in approaching the Tribunal has been well-explained. According to him, the petitioner did not take independent action as he was waiting for the final outcome of the SLP which was pending against the order of the Division Bench of this court.

5. He submits that after the SLP was dismissed *vide* order dated 20.01.2015, he made a representation to the respondents. However, since no relief was granted, he filed the O.A before the Tribunal. Counsel for the petitioner submits that since the order dated 05.06.2009 was *in-rem* there was no necessity for the petitioner to approach the Tribunal individually. He also submits that the Tribunal has itself treated its order dated 05.06.2009 as an order *in-rem*.

6. Learned counsel for the respondent has opposed this petition. Counsel for the respondent submits that there is no infirmity in the order passed by the Tribunal; and that the order of the Tribunal cannot be treated as an order *in-rem* since the facts of this case must be decided on their own merits. He further submits that no relief can be granted to the petitioner since the petitioner did not approach the Tribunal, knowing fully well that an order had been passed by the Tribunal in the case of other applicants; which is evident from the fact that the petitioner has submitted that he was waiting for the outcome of the SLP arising from that other matter.

7. We have heard learned counsel for the parties and have

considered their submissions.

8. The facts of the case are that the respondent had invited an application for the post of primary teachers in erstwhile MCD schools in July 1996. The petitioner had applied for the said post as an OBC candidate. However, no appointment letter was issued due to non-fulfillment of the criteria of date of birth.

9. Some of the candidates, who were also rejected, approached the Tribunal by way of TA No. 163/2009, which was allowed as far back on 05.06.2009. Another TA was also decided in favour of some other applicants. Meanwhile W.P.(C) 11331/2009 was preferred by the respondents challenging the Tribunal's order, which writ petition was also dismissed as far back on 07.09.2009. An SLP filed against the High Court order was also dismissed since no one had appeared for the petitioner.

10. In our view, the explanation rendered by the petitioner for the delay is neither adequate nor tenable. As the advertisement relates back to the year 1996, to say that the order of the Tribunal passed in the year 2009 is an order *in-rem* and that the petitioner was awaiting the outcome of an SLP filed by some other applicants, who had diligently pursued their rights, is not acceptable. The petitioner cannot be offered a job which was declined to him in the year 1996-98. On the issue of the O.A. being dismissed as being barred by the limitation, we agree with the Tribunal, since taking a different view would be to encourage lack of diligence, apart from having a serious impact on the rights of many other candidates who would have been appointed from the year 1998 onwards.

11. In our view the Tribunal has correctly applied the law to the facts of the case.

12. We find no infirmity in the order of the Tribunal; and the writ petition is accordingly dismissed.

13. Pending application also stands disposed of.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 29, 2020/*uj*

