

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RA No.45 of 2021 in
CWP No.21114 of 2015.
Date of Decision: 26.02.2021.**

J.D. Sandhu

....Applicant/Petitioner

VERSUS

**The Central Administrative Tribunal,
Chandigarh Bench and others**

....Respondents

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

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

LALIT BATRA, J.

Case has been taken up for hearing through Video Conferencing.

To begin with, it would be pertinent to mention here that previously CWP No.21114 of 2015 titled “J.D.Sandhu Vs. The Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others” was filed by petitioner-J.D.Sandhu impugning the legality of order dated 25.10.2013 passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, in OA No.PB-729 of 2013 titled “J.D.Sandhu Vs. Union of India and another” and further order dated 01.05.2014 rendered by Central Administrative Tribunal, in terms of which, review application No.110 of 2013 moved by the petitioner for review of order dated 25.10.2013, was dismissed, which writ petition was dismissed by this Court, vide judgment dated 26.02.2020 and the concluding paras of said judgment read as under:-

“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.”

2. Applicant/petitioner-J.D.Sandhu has filed instant review application under Order XLVII Rule 1 CPC read with section 151 CPC for review of judgment dated 26.02.2020, as detailed above, mainly on the ground that case of applicant/petitioner is under litigation for the last thirty years at various stages for the same relief of “Notional Promotion” from 1984 and the writ petition (CWP-21114-2015) was wrongly dismissed by this Court holding that OA No.729 of 2013 filed on 10.04.2013 is hopelessly time barred. Further, in the instant case, applicant/petitioner approached the Tribunal for the first time on 31.05.1991, thus, at the most, arrears of pay prior to 31.05.1988 can be denied, but writ petition cannot be dismissed on the ground of delay and laches. Further, the Tribunal wrongly dismissed the OA No.729 of 2013 and RA No.110 of 2013 on the ground of non-impleading of “necessary parties” and the said findings have been upheld by this Court, there is error apparent on the face of record and as such this Court is duty bound to set it right and resultantly CWP No.21114 of 2015, as detailed above, is liable to be allowed.

3. We have heard the petitioner in person and have carefully gone through the record of the case.

4. Applicant/petitioner while reiterating his cause as set up in the application has vehemently submitted that this Court while rendering

judgment dated 26.02.2020 has wrongly dismissed the writ petition (CWP-21114-2015) holding that OA No.PB-729 of 2013 filed on 10.04.2013 is hopelessly time barred. He further urged that in the instant case, applicant/petitioner approached the Tribunal for the first time on 31.05.1991, thus, at the most, arrears of pay prior to 31.05.1988 can be denied, but writ petition cannot be dismissed on the ground of delay and laches. He further urged that OA No.PB-729 of 2013 could not be dismissed on the ground of non-impleadment of necessary parties. He further urged that instant application for review deserves to be allowed and consequently, judgment dated 26.02.2020 rendered by this Court be reviewed accordingly.

5. Regarding aspect of controversy as to whether in a given situation, review of judgment is maintainable or not, in case “**Kamlesh Verma Versus Mayawati and others**” 2013(4) RCR (Civil) 75 (Supreme Court), it has been held that in the following grounds, review is maintainable:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

Further, in the above said ruling, various situations have been described where review will not be maintainable and the said situations are enumerated as under:-

- (i) A repetition of old and overruled argument is not enough

to reopen concluded adjudications;

- (ii) Minor mistakes of inconsequential import;
- (iii) Review proceedings cannot be equated with the original hearing of the case;
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice;
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error;
- (vi) The mere possibility of two views on the subject cannot be a ground for review;
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched;
- (viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition;
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.

6. Further, in case **“Virendra Singh Kothari Versus State of Rajasthan” 2004 (2) RCR (Civil) 90 (Rajasthan High Court)**, it has been held that it is settled legal proposition that scope of review is very limited and under the garb of review a party cannot be permitted to reopen the entire case.

7. In the instant review application, applicant/petitioner has laid emphasis on the aspect that case of applicant/petitioner is under litigation for the last thirty years at various stages for the same relief of “Notional Promotion” from 1984 and the writ petition was wrongly dismissed by this Court holding that OA No.PB-729 of 2013 filed on 10.04.2013 is

hopelessly time barred and that in the instant case, applicant/petitioner approached the Tribunal for the first time on 31.05.1991, thus, at the most, arrears of pay prior to 31.05.1988 can be denied, but writ petition cannot be dismissed on the ground of delay and laches. Apart from that applicant/petitioner has raked up the matter that his claim could not be denied for want of impleadment of necessary parties. A bare perusal of impugned judgment dated 26.02.2020 reveals that first aspect of applicant/petitioner relates to his claim for earlier date of promotion as Inspector, Income Tax and since his promotion as Inspector, Income Tax took place in accordance with the Rules, claim challenging his promotion made on the basis of the seniority list of Inspectors is without merit, whereas second aspect pertains relating to date of holding of the DPC and it was rightly held by the Court that 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 applicant/petitioner cannot unsettle the scenario when he actually got the promotion as ITO. As petitioner did not implead the persons who were promoted earlier to him as Inspectors, Income Tax and over whom he would gain seniority, in this scenario, petition was rightly held to be bad for non-joinder of necessary and proper parties. Thus, above said aspects were clearly dealt with by this Court.

8. In view of above, since there is no discovery of new and important matter or evidence and the fact that there is no mistake or error apparent on the face of the record, there is no cogent reason to review the judgment dated 26.02.2020. Even otherwise, it is settled legal proposition

that scope of review is very limited and under the guise of review, applicant/petitioner cannot be permitted to reopen the entire case.

9. As a sequel to above said findings, instant application moved by applicant/petitioner for review of judgment dated 26.02.2020 passed by this Court in CWP No.21114 of 2015 titled “ J.D.Sandhu Vs. The Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others”, being devoid of merits, is dismissed.

**(JASWANT SINGH)
JUDGE**

**(LALIT BATRA)
JUDGE**

26.02.2021
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No