

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1867 OF 2021

Rahul Sharma } **Petitioner**
versus
Union of India and Ors. } **Respondents**

Mr. Meelan Topkar for the petitioner.

Mr. R. R. Shetty with Ms. Smita Thakur for the respondents (UoI).

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: JUNE 10, 2022

P.C.:

1. This writ petition is directed against an order dated 11th October 2019 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short), whereby the petitioner's original application (Original Application No. 594 of 2013) was dismissed on the ground of delay.
2. We have heard Mr. Topkar, learned advocate for the petitioner and Mr. Shetty, learned advocate for the respondents and are of the clear view, for the reasons to follow, that the Tribunal was perfectly justified in dismissing the original application as time barred.
3. The prayers of the original application have been quoted by the Tribunal in the first paragraph of its order. Among other

substantive prayers, the main was contained in clause (c) reading as follows: -

“8(c) that this Hon’ble Court be pleased to direct the respondents to expunge the adverse material and also upgrade all the ACT/APAR grading of the applicant for the period prior to 01.01.2006 and treat the applicant’s grading as up to the required bench marks and direct reconsideration of the applicant for promotion as Technician grade D with effect from 01.11.2006 with all consequential service benefits including continuity of service, full back wages, seniority, PRIS benefits and any other admissible service benefits from the due dates.”

4. We need to notice that despite not being promoted along with other batchmates with effect from 1st November 2006, the petitioner seems to have accepted the position by not laying any challenge to his non-selection for promotion. The petitioner next participated in the process, which was conducted in the year 2010, and was promoted. After obtaining such promotion, the petitioner started voicing a grievance that he had not been communicated adverse remarks in his Annual Confidential Reports (ACRs) and, therefore, he ought to have been promoted with effect from 1st November 2006. The representations of the petitioners were rejected by the orders dated 10th October 2012 and 3rd January 2013, which were also challenged in the original application and quashing whereof was prayed.

5. Mr. Shetty is right in his contention that the petitioner ought to have challenged his non-selection for promotion with effect from 1st November 2006 within the time limit prescribed by section 21 read with section 20 of the Administrative Tribunals Act, 1985 (hereafter “1985 Act”, for short).

6. We may, in this respect, draw guidance from the decision of the Supreme Court reported in (1975) 1 SCC 152 (**P. S. Sadasivaswamy vs. State of Tamil Nadu**), wherein it has been held as follows:

"2. *** 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. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. ***"

7. We further find Mr. Shetty's submission, based on the decision of the Supreme Court reported in (2000) 2 SCC 615 (**Suneeta Aggarwal vs. State of Haryana and Ors.**), to be apt. The relevant passage from that decision reads as follows:

"4. *** The appellant did not challenge the order of the Vice-Chancellor declining to accord approval to her selection and, on the contrary, she applied afresh for the said post in response to readvertisement of the post without any kind of protest. Not only did she apply for the post, but she also appeared before the Selection Committee constituted consequent upon readvertisement of the post and that too without any kind of protest, and on the same day she filed a writ petition against the order of the Vice-Chancellor declining to accord his approval and obtained an ad interim order. In the writ petition she also did not disclose that she had applied for the post consequent upon the second advertisement. The appellant having appeared before the Selection Committee without any protest and having taken a chance, we are of the view that the appellant is estopped by

her conduct from challenging the earlier order of the Vice-Chancellor. ***"

8. Here, the petitioner participated in the process for promotion conducted in 2010 without raising any demur with regard to non-selection for promotion in 2006. He must, therefore, be deemed to have waived his right, if any, to question the process that was conducted in 2006 or to claim retrospective promotion with effect from 1st November 2006.

9. Mr. Topkar has referred to rejection of the petitioner's representations by the impugned orders dated 10th October 2012 and 3rd January 2013 and contended that invocation of jurisdiction of the Tribunal in 2013 was within the time limit prescribed by section 21 read with section 20 of the 1985 Act.

10. Upon consideration of such a contention, we are also of the view that having regard to the decision of the Supreme Court reported in (2010) 2 SCC 59 (**Union of India and Ors. vs. M. K. Sarkar**), the respondents' action of dealing with the belated representations submitted by the petitioner could not have resulted in accrual of a cause of action for approaching the Tribunal in 2013. If the petitioner felt aggrieved by his non-selection for promotion, the Tribunal's jurisdiction ought to have been invoked latest by 1st November, 2007.

11. The other contention of Mr. Topkar that the petitioner was not informed of his non-selection for promotion w.e.f. 1st November, 2006 is stated to be rejected. The petitioner is presumed to have known that he had not been selected, when his batchmates started discharging their duties on the promoted posts.

12. For the reasons aforesaid, there is no merit in the writ petition. The same stands dismissed. No costs.

SALUNKE
J V

Digitally signed
by SALUNKE J V
Date: 2022.06.13
17:20:12 +0530

(M. S. KARNIK, J.)

(CHIEF JUSTICE)