

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

221

**CWP No.13661 of 2019
Decided on : 21.03.2022**

Ajit Rai Joshi

... Petitioner

Versus

Union of India and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Ms. Sonia G. Singh, Advocate
for the petitioner.

Ms. Jyotika Panesar, Advocate for
Mr. Arvind Moudgil, Advocate for respondent No.1-UOI.

Ms. Shubhreet Kaur, Advocate
for respondent Nos.2 to 7-U.T. Chandigarh.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

The present writ petition filed under Article 226 of the Constitution of India is directed against the order dated 26.07.2018 (Annexure P-3) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'), whereby the original application has been dismissed on the ground that the writ petitioner herein was a fence sitter and the delay which was sought to be condoned of 1780 days in filing the original application was not justified. It was recorded that the cause of action arose in the year 1978 and if the benefit had not been

granted to the applicant, he should have taken action at that time. It was also noticed that the writ petitioner had retired in the year 2010 and had raised his grievance only in the year 2017 and, therefore, there was a delay of 7 years in approaching the Tribunal.

Counsel for the petitioner has vehemently submitted that the petitioner had retired on 30.04.2008 and not in the year 2010 as noticed in the order of the Tribunal, but the matter remained pending before the authorities. A legal notice dated 07.05.2012 (Annexure A-6) was served upon the respondents and, thereafter the original application was decided on 21.12.2012 (Annexure A-7) with directions to take a decision on the same. It is submitted that in pursuance of the same benefits of the claim of grant of selection grade w.e.f. 1978 were denied on 01.04.2013 (Annexure A-8).

It is the case of the counsel for the petitioner that on 08.06.2013 (Annexure A-9) another legal notice as such was served, which was rejected on 23.08.2013 (Annexure A-10) and, thus, it is submitted that the petitioner was always agitating for his rights. His claim was rejected on 31.03.2015 (Annexure P-2) while referring to the various applications which were made between 18.12.2013 to 12.02.2015. It is further submitted that an original application had also been filed, which was dismissed as withdrawn with liberty to file a fresh one on the same cause of action, vide order dated 28.09.2017 (Annexure A-19).

The retirement of the petitioner was way-back in the

year 2008 and the legal notice was only served after 4 years on 07.05.2012 (Annexure A-6). In the considered opinion of this Court, merely because there was a direction to decide the legal notice would not get over the limitation as such. Nothing could be shown that during the service, the petitioner had been agitating for his claim of selection grade w.e.f. 01.02.1978 and, therefore, merely by keeping the issue alive by serving demand notices, limitation would not get extended. Reliance can be placed upon the judgment of the Apex Court passed in **C.Jacob Vs. Director of Geology & Min. Indus.Est. and another 2008 (10) SCC 115** wherein the issue of representations had been considered. It was held that by serving such representations, a fresh cause of action cannot as such be revived and neither a dead or stale claim can be revived. Relevant portion of the judgment reads as under:

“6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court

seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. 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 realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the exemployee 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.

7. 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.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural 'relationship' to give rise to a fresh cause of action.

9. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back-wages for 20

years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages.”

In similar circumstances in the case of '**State of Uttaranchal and another Vs. Sri Shiv Charan Singh Bhandari and others**', 2014 (1) SCT 303, it has been held that belated representations in regard to the stale or dead issues in compliance of the directions issued by the Court or Tribunal to do so, would not furnish a fresh cause of action for time barred disputes. The cause of action would not rise like a phoenix and the person who sleeps over his rights and slumber over the same is bound to suffer and, therefore, filing of the representations would not save the period of limitation and delay on the part of the Government servant may deprive him of the benefits which had been given to others, since law leans in favour of those who are alert and vigilant.

In such circumstances, we are of the considered opinion that the impugned order dated 26.07.2018 (Annexure P-3) passed by the Tribunal does not warrant any interference on account of delay and negligence on the part of the petitioner who has slept over his rights during his service period and after retirement has tried to revive the issue.

Resulantly, this Court is opinion that no case is made

out to exercise its extra-ordinary writ jurisdiction over the well
reasoned order of the Tribunal and the writ petition stands
dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 21, 2022
Naveen

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No