



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

% *Date of decision: 18th December, 2023*

+ W.P.(C) 16266/2023 & CM APPL. 65508/2023

(48) NAVEEN GUPTA

..... Petitioner

Through: Mr. Manoj K. Srivastava and Ms. Sakshi M., Advs. with petitioner in person

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Avshreya Pratap Sing Rudy, SPC with Mr. Aakash Meena, G.P. and Ms. Usha Jamnal, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 65508/2023

Allowed, subject to just exceptions.

Application disposed of.

W.P.(C) 16266/2023

1. The challenge in this writ petition is to an order dated November 07, 2023, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 351/2023, whereby, the Tribunal has dismissed the O.A. filed by the petitioner both on the ground of limitation as well as on merits.

2. The case of the petitioner before the Tribunal was that pursuant to the advertisement issued by the respondent No.3 for filling one post of Modeller



Grade-II (Unreserved), he had applied along with 33 other candidates. The Call Letters were issued to six candidates for practical test. On the basis of practical test, two candidates were found suitable. One was Sh. Avijit Mondal and second was the petitioner herein. As far as Sh. Avijit Mondal, candidature at Serial No. 1 is concerned, he was not found eligible for grant of age relaxation. Insofar as the petitioner is concerned, there was no clarity about his educational qualification. On the aspect of the limitation and on merit, the Tribunal has in paragraphs 5 and 6 stated as under:-

“5. The selection was held in the year 2013 and even for filing an RTI, the applicant took nine years and this OA has been filed in 2023, i.e. after 10 years. The fact remains that the said reply was received by the applicant on 26.02.2022 in pursuance of his RTI query which was made on 31.01.2022. After preferring the RTI application also, the applicant waited for approximately nine months to file the OA. In the above circumstances, we find that there is no sufficient explanation for the delay.

*6. That apart, we have also gone into the merits of the matter. As stated earlier, it is the stand of the respondents that selection process was abandoned since there was no clarity about the education qualification of the applicant. By now, it is a settled position of law that a candidate has no indefeasible right to be appointed. His right is only to be considered for appointment. Reference can be made to decisions of the Hon'ble Apex Court in the matter of **Shankarsan Dash vs. Union of India**, (1991) 3 SCC 47 and **Dinesh Kumar Kashyap & ors. vs. South East Central Railway & ors.**, (2019) 12 SCC 798. The only exception the Hon'ble Apex Court has drawn is that the decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. As stated above, we have already referred that the selection process was abandoned by the respondents as there was no clarity about the educational qualification of the applicant. Thus, on merit also, the applicant has no case.”*



3. The submission of learned counsel for the petitioner before us is also that the petitioner was called for interview on February 09, 2015. The respondents for the reasons best known to them, had not declared the result. He submits that, between the years 2017-2019, the petitioner did made representations to the different functionaries with regard to the action of the respondents in not declaring the result.

4. It is also his submission that the petitioner had also visited the office of the respondent No.2 and agitated the issue of his non-appointment. Thereafter on January 31, 2022, the petitioner had invoked the provisions of the Right to Information Act, 2005 and sought information.

5. The respondent No.3 had given reply to the RTI application on February 18, 2022 and immediately thereafter the petitioner approached this Court by filing a writ petition being W.P.(C) 11763/2022 which was disposed of granting liberty to the petitioner to approach the Tribunal. He states, the O.A. was not barred by limitation which can result in the dismissal of the O.A. Insofar as the issue on merit is concerned, he states that there is no issue with regard to the qualification of the petitioner and as such there was no reason for the respondents not to appoint the petitioner when Sh. Mondal was over aged. He also relies upon the following judgment in support of his contentions:-

i. *Shankarsan Dash v. Union of India*, (1991) 3 SCC 47.

ii. *Union of India v. Uzair Imran and Others*, 2023 SCC OnLine SC 1308.

6. We are not convinced by the submissions made by the learned counsel for the petitioner for the reason that, he having appeared in the



interview on February 09, 2015, could have waited for a reasonable period but surely not for two years after the interview to make a representation only on October 26, 2017. In fact, the petitioner continued to make representations without approaching the Court of law/Judicial Forum. It is conceded position of law that, continuous representations would not extend the limitation. Even the provisions of RTI Act were invoked only in the year 2022 i.e., after more than 1½ years from the date of last representation i.e., August 05, 2019 and after almost seven years from the date of interview. The Supreme Court in the case of **S.S. Rathore v. State of M.P., (1989) 4 SCC 582**, while interpreting the Section of 21 of the Administrative Tribunal Act has stated as under:-

“21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court's jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.”

7. We are of the view that the Tribunal has rightly rejected the application filed by the petitioner seeking condonation of delay in filing the O.A. Even on merit since there was an issue with regard to the qualification of the petitioner. In any case, we are of the view as the subject selection relates back to the year 2013 and it is not the case of the petitioner that some third person has been appointed on the post instead of him though he was at serial No.2, we see no reason to interfere with the impugned order in



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exercise of our jurisdiction under Article 226 of the Constitution in the facts,
and dismiss the petition. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

DECEMBER 18, 2023/ds