

(2011) 04 MP CK 0039

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4562 of 2009 (s)

Ramesh Chand Dubey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 20(2), 21, 21(1)
Constitution of India, 1950 — Article 226

Citation : (2011) 04 MP CK 0039

Hon'ble Judges : S.S. Kemkar, J; Abhay M. Naik, J

Bench : Division Bench

Judgement

Abhay M. Naik, J.—This writ petition has been preferred against the order dated 10th November, 2008 (Annexure P/4) passed in Original Application No. 734/2007 by the Circuit bench sitting at Indore of the Central Administrative Tribunal, Jabalpur Bench, rejecting thereby Miscellaneous Application No. 713/2007 submitted by the Petitioner for condonation of delay and consequential dismissal of the original application.

2. Briefly stated relevant facts are that the Petitioner was appointed on the post of Upper Division Clerk (UDC) in the Department of Revenue under the Ministry of Finance on 15.01.1969. After passing the requisite departmental examination for Ministerial Staff (UDC) in July 1972, the Petitioner qualified for the post of Inspector of Income Tax in the year 1981. In view of his seniority, he made an application for grant of notional promotions in the cadre of Supervisor Grade-II and the Inspector of Income Tax from the date from which another employee junior to him, namely, Smt. M. Varghese, was promoted. His application contained prayer for fixation of his seniority, salary and pension accordingly. His contention was that he was promoted to the post of Head Clerk (presently known as the post of Assistant) with effect from 11.06.1991 and Smt. M. Varghese, though junior to the Petitioner, was declared to be deemed to be notionally promoted as Head Clerk with effect from 11.06.1991 vide office order No. 1606/96 dated 26.04.1996. Petitioner submitted that he ought to have been

promoted to the next higher post of Supervisor Grade-II (now known as the post of Office Superintendent) with effect from 30th January, 1995, when Smt. M. Varghese was promoted, as Supervisor Grade-II vide order No. 17 dated 26.04.1996. Similarly, Petitioner was promoted to the cadre of Inspector with effect from 26.02.2001 vide order No. 51/01 dated 24.12.2001, whereas Smt. M. Varghese was promoted as Inspector with effect from 31.07.1997 vide order No. 22 dated 31.07.1997. According to the Petitioner, Smt. M. Varghese, being junior to him, could not have been promoted on the aforesaid various posts prior to him.

3. Petitioner made various representations from time to time including earliest one dated 23.06.1978. Other representations were stated to have been made on 05.11.1980, 25.02.1982, 27.05.1987, 05.11.1989, 19.08.1994, 16.02.1995 and 01.08.1995 as enclosed to the representation dated 30th August/26th September, 1996. According to him, none of the earlier representations was decided. It was only vide Annexure A/1 dated 22.08.2006 communicated to the Petitioner vide letter dated 22.03.2007 received at his end on 15.04.2007 that he was informed about the final rejection of his representation, Original Application (OA) was submitted alongwith an application u/s 21 of the Administrative Tribunal Act, 1985, seeking condonation of delay, alongwith affidavit.

4. It is not out of place to mention here that the Petitioner had already stood superannuated on 31.07.2002.

5. Respondents submitted counter reply, refuting thereby the claim of the Petitioner. They also opposed the OA on the ground of limitation.

6. Petitioner also submitted a rejoinder, in reply to the return filed on behalf of the Respondents.

7. Learned Members of the Central Administrative Tribunal (CAT) vide impugned order dated 10th November, 2008 dismissed the condonation application marked as MA No. 713/2007 and, consequently, the Original Application.

8. Shri A.K. Sethi, learned senior advocate and Shri Vivek Sharan, learned Assistant Solicitor General made their respective submissions, which have been considered in the light of the material on record.

9. Clause (a) Sub-section (1) of Section 21 of the Administrative Tribunal Act, 1985 provides a limitation of one year from the date on which a final order, rejecting a representation of the Petitioner is made. We feel it proper to reproduce Sections 20 and 21 of the said Act, which deserve to be considered in the present writ petition.

20. Applications not to be admitted unless other remedies exhausted. -(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of Sub-section (1), a person shall be deemed to have

availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of Sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation. - (1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in Clause (a) of Sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of Sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in Sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of Sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), an application may be admitted after the period of one year specified in Clause (a)

or Clause (b) of Sub-section (1) or, as the case may be, the period of six months specified in Sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

10. Shri A.K. Sethi, learned senior advocate contended that the representation of the Petitioner was, for the first time, rejected on merits vide order dated 22.08.2006, therefore, the original application submitted in the year 2007 ought to have been considered on merits.

11. Shri Vivek Sharan, learned Assistant Solicitor General countered it by saying that repeated representations do not provide fresh cause of action and the claim of the Petitioner, being a stale one, has rightly been rejected as barred by time and also on merits.

12. It is a settled law that mere repeated representations do not provide fresh cause of action. It is not in dispute that the Petitioner has made various representations from time to time. A consistent view declared by the Apex Court long back in the case of Rabindranath Bose and Others Vs. The Union of India (UOI) and Others, laid down that if the Government has turned down a representation, making of another representation on similar lines, will not extend delay. It has been found by us in the present case that the Respondents have failed to aver that any representation made by the Petitioner was turned down in the past. They have also failed to place on record any document to establish that any earlier representation was already dismissed on merits or even otherwise.

13. On the question of effect of delay and laches on the petition, the Apex Court has observed in the case of Tridip Kumar Dingal and Ors. v. State of West Bengal and Ors. AIR 2008 SC 824:

55. If the Petitioner wants to invoke jurisdiction of a writ-Court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime.

It may be seen that the claim of the Petitioner was neither disposed of nor settled at any earlier point of time.

14. From the facts stated herein above, it is clear that the Petitioner had kept the issue alive and has been agitating for his claim by making representations from time to time. Gujarat High Court in a similar situation has observed in the case of Forum of Retired Officers, Employees of Gujarat State Financial Corporation and Anr. v. State of Gujarat and Ors. 2005 L I.C. 988 as follows:

19. With respect to the contention of delay and laches also, I find that the Petitioners had made several representations to the Respondent No. 3 for implementation of the Pension Scheme as envisaged in its Resolution dated

27-1-1994. This Court had noted in the earlier portions of this judgment that number of attempts had been made by the Petitioners before filing the petition, but the Respondent No. 3 had not replied to any of these representations. From the petition as well as from the rejoinder affidavits filed by the Petitioners, it is clear that at all stages the employees had kept the issue alive and have been agitating, representing and persuading the Respondent No. 3 Corporation to effectively implement the Pension Scheme as proposed in the Resolution dated 27-1-1994. It is therefore, not be possible for me to reject the petition solely on the ground of delay and laches.

15. The Apex Court has considered the effect of absence of response to the representations made by the Petitioners from time to time in their favour in the case of *G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others*, , which may be successfully referred by us in this case.

In the case of *Ashok Kumar Vs. State of Bihar and Others*, , it has been clearly observed to the effect that an employee, after filing a representation, may expect that an order would be passed on his representation. In the case of *Ashok Kumar (supra)*, the writ petition filed by the employee was dismissed not on merits, but on the ground of delay and laches. It has been observed in paragraph No. 3: -

We are of the view that the Division Bench as well as the learned single Judge of the High Court were not justified in rejecting the writ petition as well as the writ appeal on the ground of delay and laches as the writ Petitioner i.e. the Appellant had moved the writ petition before the High Court against the decision of the State Government only in 1996, i.e. after 4 years from the date of passing of such order. The Division Bench as well as the learned Single Judge, in our view, had committed an error in holding that the pendency of the review/representation of the writ Petitioner/Appellant could not be taken to be a ground for condoning the delay after 4 years of the decision of the State Government. In our view, the High Court had fallen into error in not holding that the Appellant had sufficiently explained why the writ petition could not be moved or why it was moved after 4 years of the decision of the State Government. Since the Appellant had filed a representation/review of the decision of the State Government, it was expected by him that an order should be passed on the said representation/review. Therefore, in our view, the delay in moving the writ application against the decision of the State Government was sufficiently explained by the Appellant and, therefore, the writ petition ought not to have been dismissed on the ground of delay and laches.

16. It is not a case of the Respondents that the representation of the Petitioner was already decided on merits prior to Annexure A/1. Undisputedly, a stale claim cannot be revived by making repeated representations. Learned Members of the CAT have committed an illegality in not making a distinction between "rejection of claim on mere ground of limitation" and "rejection of claim on merits". A stale claim, rejected merely on the ground of undue belatedness and laches, cannot be

legally revived, whereas a stale claim, howsoever, delayed it may be, may stand revived, if it is dismissed, for the first time, on merits. Respondents have not placed on record neither before the CAT nor before this Court to demonstrate that any earlier representation of the Petitioner was already dismissed on merits in the past. No such observation is found in Annexure P/1 (marked as Annexure A-1 in O.A. No. 734/2007), that any representation of the Petitioner in respect of the claim in question was earlier rejected, at any point of time. Annexure P/1 was served upon the Petitioner on 15.04.2007. Representation of the Petitioner was rejected vide Annexure P/1 for the first time. This being so, cause of action may be said to have accrued to the Petitioner on account of such rejection on merits. Since copy of this order was served upon the Petitioner on 15.04.2007, submission of OA in the year 2007 itself, could not have been legally dismissed, as barred by time. In case if the Petitioner's claim is found correct, justice may be imparted by granting him notional benefits during the past and actual monetary benefits from the date of his approaching the Administrative Tribunal.

17. As regard belated and stale claim, it has already been observed by the Hon'ble Supreme Court of India in the case of Dehri Rohtas Light Railway Company Limited v. District Board, Bhojpur and Ors. 1992 AIR SCW 3181: -

13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the Petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the Appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however, agree that the suit has been rightly dismissed.

18. In the case of Shiv Dass Vs. Union of India (UOI) and Others, Appellant was out of service in the year 1983, whereas writ petition was filed in the year 2005. The matter was related to pension, the Apex Court observed: -

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit Appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.

11. In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether Appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition.

19. Placing reliance on the decision of the Supreme Court of India dated 22.09.1964 in Civil Appeal No. 140/1964, Full Bench of Punjab High Court in the case of Rajinder Parshad and Another Vs. The Punjab State and Others, has held that where a single Judge dismisses a petition under Article 226 on the ground of delay and the aggrieved party goes in Letters Patent Appeal, the appellate Court would normally be reluctant to interfere in the order unless it is satisfied that the discretion was not properly, reasonably or judiciously exercised or unless there are strong reasons to justify interference. In view of the observations made by us in the preceding paragraphs, we are of the opinion that the impugned order calls for interference on the aforesaid parameters.

20. At this juncture, we may successfully refer to the decision of the Hon'ble Supreme Court of India authored by learned Hon'ble Mr. R.V. Raveendran J. in the case of C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, . It has been observed:

10. 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.

11. 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 so 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.

In the light of the aforesaid observations and the law laid down in the case of C. Jacob (*supra*), it is further observed that the Respondent/department decided the representation of the Petitioner for the first time on merits vide Annexure A/1 dated 22.08.2006. The representation made by the Petitioner was rejected vide Annexure A/1 for the first time, after examining merits of the claim of the Petitioner. There is no iota on record to suggest that the representation of the Petitioner was rejected at any earlier point of time, either on merits or otherwise. True, that it could have been rejected as having become stale or barred by limitation, but the department did not choose to do so. Instead, the same was decided on merits for the first time in August, 2006. Further, there is no iota on record to suggest that the consideration of the representation of the Petitioner on merits was made pursuant to any direction of Court/ Tribunal. It seems to have been decided on merits by the department at its own wisdom. This being so, the impugned order contained in Annexure A/1 may revive the stale claim on the ground of dismissal of the representation on merits for the first time in August, 2006 and it may give rise to a fresh cause of action enabling an employee to adopt a legal recourse, in accordance with law for redressal of his grievance.

21. We have perused the impugned order marked as Annexure P/4. Though in the concluding paragraph, it is mentioned that finding no merit and reasonable cause for the delay, condonation application is dismissed and consequently OA is also dismissed, we do not find discussion on the Petitioner's claim on merits. Reasonings are contained in paragraph 4 of the impugned order, which merely deal with the question of delay. Learned Members of the CAT have nowhere considered the effect of dismissal/rejection of representation on merits for the first time on 22.08.2006. We observe that even a stale claim of an employee, made by way of representation, if rejected on merits for the first time, it may give rise to a cause of action, which may enable the employee to approach a Court/Tribunal for redressal of grievance. It is further observed that if a stale claim is rejected merely on the ground of undue delay with no explanation, a Court/Tribunal may refuse to entertain it on account of inordinate delay and unexplained laches.

22. From perusal of the impugned order, it is clear that the aspect of delay adverted to by the learned Members of CAT in the course of the order was a different one. They failed to take into consideration that the dismissal of the representation was, for the first time, made on merits vide order dated 22.08.2006, copy whereof was served on the Petitioner on 15.04.2007. There is no iota on record to show that the representation of the Petitioner was ever turned down in the past. The Administrative Tribunals are constituted to deal with service matters. They must, therefore, put a construction which harmonizes and further the aim and object of the legislation instead of impeding the same.

They should adopt a liberal and justice oriented approach to enable a litigant to get his dispute decided on merits and not otherwise. This being so, in our considered opinion, the claim of the Petitioner could not have been legally rejected solely on the ground of delay and his case ought to have been considered on merits.

23. In the result, we find that the learned Members of the CAT have committed an error of law in rejecting the OA merely on the ground of delay, without considering that the representation of the Petitioner was rejected on merits, for the first time, which enabled him to approach the CAT. This being so, the impugned order marked as Annexure P/4 is not found sustainable in law. Accordingly, the same is hereby set aside. Matter is remitted back to the CAT with a direction to decide it afresh on merits, after granting an opportunity of hearing to both the parties. Needless to say that looking to the age and retiral status of the Petitioner, the CAT is expected to decide the case on merits in an expeditious manner.

No order as to costs.

C.c. as per rules.