
(2018) 02 DEL CK 0461

In the Delhi High Court

Case No : Civil Writ Petition No. 1581 Of 2018, Civil Miscellaneous No. 6533 Of 2018

R.S. Verma

APPELLANT

Vs

Sports Authority Of India And Ors

RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

Administrative Tribunal's Act, 1985 — Section 20(2)(b), 21, 21(1)(b)

Citation : (2018) 02 DEL CK 0461

Hon'ble Judges : Hima Kohli, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Avijit Singh, Heena Sharma, Keshav Mohan, Rishi K.Awasthi, Vivek Goyal, Kavindra Gill, Rajeev Ranjan Shahi, Harsh Pandit

Final Decision : Dismissed

Judgement

1. The petitioner is aggrieved by the order dated 31.10.2017, passed by the Central Administrative Tribunal, rejecting O.A. No.2427/2016, filed by him

on two counts, firstly, that the issue raised in the said O.A. is identical to the issue raised by the petitioner in an earlier O.A. filed by him in the year

2014 i.e. O.A. 1307/2014 and therefore, the same is hit by the principles of res judicata; secondly, on the ground that the petition is barred by

limitation. The petitioner is also aggrieved by the order dated 19.12.2017, passed by the Tribunal, dismissing the review application filed by him,

seeking review of the order dated 31.10.2017.

2. In the earlier O.A. No.1307/2014 filed by the petitioner in the year 2014, he had sought quashing of the order dated 04.03.2014, passed by the

Deputy Inspector General, CRPF, calling upon him to refund the over payment towards the pensionary benefits. Further, the petitioner had sought

directions to the CRPF to accept his technical resignation for his deemed absorption in the respondent No.1/Sports Authority of India w.e.f.

01.04.1987. Lastly, the petitioner had sought issuance of directions to the respondent No.1/Sports Authority of India to calculate his revised terminal

benefits w.e.f. 01.04.1987, in view of his deemed absorption from the said date, including arrears of pay, promotion and pensionary benefits.

3. The aforesaid O.A. was disposed of by the Tribunal in view of the submissions made by learned counsel for respondents No.1 and 2 to the

following effect:-

(i) Cheque No.015503 dated 16.03.2016 amounting to Rs. 13,699/-issued in full and final settlement of the claim of the applicant was

handed over to him in the Court.

(ii) The relief as claimed in prayer clause No.8(ii) of the OA regarding acceptance of technical resignation for deemed absorption from

01.04.1987, had been granted.

(iii) Respondents No.1 and 2 admitted that excess receipt on account of leave salary and pension contribution had been made to the Sports

Authority of India.

(iv) The prayer claiming interest @ 12% per annum was opposed on the ground that as the petitioner had retired in the year 2009 and had

elected to file the OA only in the year 2014, there was no question of awarding any interest to him.

4. The Tribunal disposed of OA No.1307/2014 recording that interest could only accrue on an incremental amount and instead of directing the

respondents to calculate the interest on that amount, awarded cost of Rs. 5000/- to the applicant in lieu of the payment of interest on the incremental

amount. The Tribunal disposed of OA No.1307/2014 recording that since the petitioner had accepted the cheque under protest, in case of any

grievance still surviving, he may seek legal recourse.

5. The subsequent O.A.No.2427/2016, filed by the petitioner is predicated on the aforesaid liberty purportedly granted by the Tribunal vide order dated

19.04.2016.

6. Learned counsel for the petitioner submits that the principles of res judicata could not have been applied in the present case since no orders on

merits was passed on any of the reliefs that were prayed for by the petitioner in the earlier O.A. In the subsequent O.A., the petitioner has prayed for

considering his case for promotion to the post of Deputy Director w.e.f. 01.04.1987 and has raised a grievance that he was entitled to promotion to the post of Assistant Director with consequential benefits w.e.f. 12.11.1987, the date when one Mr.S.K.Prashar, his junior, was granted promotion.

7. It is relevant to note that though the petitioner had flagged the aforesaid grievance of not being promoted before his junior, Mr.S.K.Prashar in the year 1987 in the earlier O.A. filed by him and even stated that he had submitted a representation dated 23.08.2001 to the respondents, to consider his case for promotion to the post of Assistant Director from the date his junior had been promoted to the said post i.e. w.e.f 20.02.1992, no specific relief in this regard was prayed for in the earlier petition.

8. The first date on which the cause of action for seeking promotion at par with his junior had admittedly arisen in favour of the petitioner, was on

12.11.1987, when his junior was appointed to the post of Assistant. The records reveal that the petitioner was promoted to the post of Assistant w.e.f.

28.08.1992. However, for almost a decade thereafter, the petitioner kept silent and did not raise any grievance in this regard till 23.08.2001, when he

submitted a representation for the first time to the respondents. Assuming that the respondents did not reply to the said representation, then the

petitioner was required to approach the court for appropriate relief within a reasonable time. Admittedly, the petitioner did not take any such steps till

he superannuated on 28.02.2009 and even thereafter. After the expiry of five years, reckoned from the date of his superannuation, the petitioner

filed the first O.A. in the year 2014 wherein he did not seek any relief with regard to his promotion except for seeking general consequential reliefs.

Assuming that the petitioner had sought the relief of promotion w.e.f. 12.11.1987, as claimed by the learned counsel and the said relief was not

granted by the Tribunal, then he ought to have assailed the order dated 19.04.2016, passed by the Tribunal before the High Court. However, the

petitioner did not do so. Instead, he filed a second application, O.A.No.2427/2016, on 13.06.2016. Therefore, assuming that the doctrine of res judicata

would not come in the way of the petitioner, as no finding on merits was returned on any issue raised in the earlier petition and the O.A. was simply

disposed of on the basis of the submissions made by the other side that they had on their own given adequate relief to the petitioner, fact remains that

in the first O.A., he did not specifically claim the relief of promotion to the post of Assistant from 12.11.1987 and to the post of Assistant Director

from 20.2.1992.

9. We may refer to the provisions of Section 21 of the Administrative Tribunal Act, 1985 that provide for a limitation of one year reckoned from

the date on which the final order has been made, for a litigant to approach the Tribunal for relief which is reproduced herein below:

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.â??

10. In the present case, it is the petitionerâ??s own stand that though he had submitted a representation in the year 2001 claiming promotion to the

post of Assistant w.e.f. November 1987 and Assistant Director w.e.f. February, 1992, the respondents did not pass any orders thereon. We have

serious reservations about the maintainability of such a claim after fifteen years reckoned from 1987 and nine years reckoned from 1992. But taking

the date of the representation made by the petitioner as sometime in the year 2011, the period of limitation for approaching the Tribunal would have to

be reckoned in terms of Section 21(1)(b) of the Act which provides that 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 have expired thereafter without any final order having been made, then

an application ought to be filed within one year from the date of expiry of the period of six months.

11. The representation made by the petitioner claiming promotion w.e.f. 12.11.1987 and from 20.02.1992, is dated 23.08.2001; the period of six months

reckoned from the said date would have expired on 22.02.2002 and the period of one year reckoned from 22.02.2002, would have expired on

21.02.2003. Admittedly, the petitioner did not seek legal recourse till the year 2014. In the earlier O.A. filed by him, though the issue of non-grant of

promotion in the year 1987 & 1992 was highlighted, the Petitioner he did not ask for the said relief. Given the aforesaid position, we are of the opinion

that even though the doctrine of res judicata is not applicable to the case in hand and has been erroneously invoked by the Tribunal, the O.A. filed by

the petitioner is squarely hit by gross delay and laches.

12. The petition is accordingly dismissed in limine, alongwith the pending application.