

UNION OF INDIA

v.

A. DURAIRAJ (D) BY LRS.
(Civil Appeal No. 1783 of 2005)

DECEMBER 01, 2010

**[R. V. RAVEENDRAN, P. SATHASIVAM AND A. K.
PATNAIK, JJ.]**

Constitution of India, 1950:

Article 226 – Writ petition – Delay and laches – Employee was denied ad hoc promotion as Assistant Signal and Telecommunication Engineer (ASTE) in 1976 because of the medical report showing him as colour blind – In the year 1998 the employee on acquiring a B. E. degree was sent for medical examination for being empanelled for promotion – Report of Medical Board favourable – Representation by employee in December 1998 that he was unjustly refused ad hoc promotion in 1976 – Rejected – O.A. dismissed by Tribunal on ground of delay and laches – High Court in a writ petition directing the employer to pay Rs. 2 lakhs as compensation – Held: Even if no limitation is prescribed, any belated challenge would be liable to be rejected on the ground of delay and laches, otherwise it would lead to serious administrative complications – In the instant case, s.21 of the 1985 Act, prescribes limitation for approaching the Tribunal – Even otherwise, non-selection in 1976 had attained finality – High Court having held the 1976 medical report bona fide, was not justified in granting compensation to the employee on a vague assumption that he had suffered loss of opportunity and mental agony – Order of High Court set aside – Administrative Tribunals Act, 1985 – s.21 – Delay/Laches – Compensation.

Service Law:

- A *Promotion to the post of Asstt. Signal and Telecommunication Engineer – Colour vision test – In 1976 medical report indicated the employee colour blind – Ad hoc promotion denied – In 1998 and 2000 with advanced equipments colour blindness found minimal – Subsequently,*
- B *employee promoted – Claim of employee that refusal of ad hoc promotion to him in 1976 was not just – HELD: The medical report of 2000 makes it clear that medical report of 1976 was not the erroneous nor was it the result of any negligence – Rejection of his candidature was for justifiable*
- C *reasons – Besides, the employee had failed in written examination for promotion held in 1980 and, therefore, would not have been entitled to regular promotion even if he was not colour blind – Failure to promote the employee on ad hoc basis in 1976 had no bearing on his chances of regular*
- D *promotion – No injustice has occurred to the employee.*

The respondent, belonging to a Scheduled Caste, was, in the year 1976, considered for *ad hoc* promotion to the post of Assistant Signal and Telecommunication Engineer ('ASTE'), but was not found suitable as his

E medical examination indicated that he was colour blind. In the year 1998, the respondent acquired a B.E. Degree. He was sent for medical examination for being empanelled as an eligible candidate for Group 'B' promotion. The report of the Medical Board was

F favourable and the respondent was promoted as Assistant Work Manager on *ad hoc* basis. The respondent then gave representations dated 28.12.1998 and 3.9.1999 contending that he was unjustly refused *ad hoc* promotion in 1976 and, therefore, he should be given

G promotion as ASTE with retrospective effect from 1976 as also all consequential promotions. Since that request was not acceded to, the respondent filed an O.A. before the Central Administrative Tribunal, which directed the authorities to consider the representations. Accordingly,

H the representation of the respondent was considered and

by order dated 8.2.2000, he was directed for a special medical examination. The respondent challenged the said order in another O.A. reiterating the stand taken in the earlier O.A. and seeking a direction to the authorities to promote him to the post of Deputy Chief, S&T Workshop w.e.f. 1991 when, according to him, his promotion to the said post became due. Pursuant to the order dated 8.2.2000, the respondent was referred for a comprehensive testing for colour blindness and a team of experts using the latest equipments found his colour blindness to be minimal, which would not affect his work. However, the Tribunal dismissed the respondent's application. The respondent then filed a writ petition before the High Court. Meanwhile, he was given promotion as ASTC on 22.11.2002 and he retired from service on 30.4.2003. The High Court observed that the subsequent diagnosis that the colour blindness was minimal was on account of comprehensive examination procedure with technologically advanced equipments available at that stage and did not establish that the opinion in 1976 was either *mala fide* or negligent, but directed the employers to pay him a sum of Rs. 2 lakhs as compensation. Aggrieved, the employers filed the appeal.

Allowing the appeal, the Court

HELD:

1. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the court/tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the court/tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions

A which has been granted to others over the years. Further,
 where a claim is raised beyond a decade or two from the
 date of cause of action, the employer will be at a great
 disadvantage to effectively contest or counter the claim,
 as the officers who dealt with the matter and/or the
 B relevant records relating to the matter may no longer be
 available. Therefore, even if no period of limitation is
 prescribed, any belated challenge would be liable to be
 dismissed on the ground of delay and laches. However,
 in the instant case, s.21 of the Administrative Tribunals
 C Act, 1885 prescribes the limitation for approaching the
 Tribunal. The High Court ought to have affirmed the order
 of the Tribunal dismissing the application of the
 respondent for retrospective promotion from 1976, on the
 ground of delay and laches. [Para 12, 13-14] [992-C-F;
 991-G-H; 993-H; 994-A]
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Union of India v. M. K. Sarkar 2009 (16) SCR 249 = 2010
 (2) SCC 58 – relied on.

E 2.1 The fact that the respondent was subjected to
 medical examination in 1976 and that he was found to be
 colour blind is not disputed. The respondent neither
 challenged his non-promotion as *ad hoc* ASTE nor the
 medical report. On account of the non-challenge, the
 issue relating to his non-selection in 1976 attained finality
 F and the same issue could not have been reopened in the
 year 1999-2000, on the ground that medical tests
 conducted in 1998 and 2000 showed him to be not colour
 blind. The report of 2000 makes it clear that the medical
 report of 1976 was neither erroneous nor the result of any
 G negligence. Thus, even if the test report of 2000 had
 demonstrated that the test report of 1976 was erroneous,
 it would not be possible to attribute any negligence or
 carelessness in regard to the earlier medical opinion or
 report, as subsequent test results were recorded by
 using equipment based on scientific and technological
 H

advances, which were not available at the time of earlier tests. In view of the clear findings by the High Court that the medical opinion of 1976 was bonafide and that even if the respondent had been found medically fit in 1976, without passing the written examination in 1980 or thereafter, he could not have been promoted as ASTE on regular basis, the entire case of respondent becomes untenable. There was no negligence/arbitrariness either in regard to the Medical Examination or in regard to his non-promotion to an *ad hoc* position in 1976. No injustice has occurred in the case of respondent. [Paras 12 and 15-18] [992-A-B; 994-A-B; 995-E-H; 996-A-B; 995-F-H; 996-A-B]

2.2 Sympathy cannot erase the clear principles of law and findings of fact or the effect of delay and laches. In the instant case, the prayer in the writ petition was for retrospective promotion. The High Court found that the respondent was not entitled to such promotion. It also held that what was denied was only an *ad hoc* promotion and found that the respondent had failed in the written examination in the year 1980 and, therefore, would not have been entitled to regular promotion, even if he was not colour blind. The failure to promote the respondent on *ad hoc* basis in 1976 had no bearing on his chances of regular promotion. At all events the rejection of his candidature for *ad hoc* promotion was for justifiable reasons. Therefore, the High Court was not justified in granting compensation on a vague assumption that the respondent had suffered loss of opportunity and mental agony on account of what transpired in 1976. The order of the High Court is set aside and that of the Tribunal dismissing the original application filed by the respondent, restored. [Para 19-20] [996-C-G]

Case Law Reference:

2009 (16) SCR 249

relied on

Para 14

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1783 of 2005.

From the Judgment & Order dated 10.03.2004 of the High Court of Judicature at Madras in Writ Petition No. 4078 of 2001.

B Arvind Kumar Sharma for the Appellants.

R. Nedumaran for the Respondent.

C The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J. 1. Application for substitution allowed. The appellants are permitted to bring the legal heirs of the deceased respondent on record. Cause title to be amended. Heard.

D 2. The respondent, a diploma holder in mechanical engineering belonging to a schedule caste, while working as a Senior Section Engineer, Signal and Telecommunications, Southern Railways, in the year 1976, was considered alongwith others, for *ad hoc* promotion to the post of Asst. Signal and Telecommunication Engineer ('ASTE' for short). Those who passed the medical examination (which included the tests to find out whether the candidates were not suffering from colour blindness) were given *ad hoc* promotions. However the medical examination report of respondent showed that he was colour blind and, therefore, he was not given *ad hoc* promotion as ASTE.

F 3. In the year 1980, the respondent appeared for the written examination for regular promotion to Class II Group 'B' Services (including ASTE), but failed to qualify and was not promoted. According to the respondent, three other schedule caste candidates who were earlier given *ad hoc* promotion as ASTE, and who also had failed in the written examination, were promoted in view of the policy of the government to select the best among the failed schedule caste candidates. According

to respondent, if he had been given the *ad hoc* promotion in the year 1976, he would have had a better chance of been considered for regular promotion as ASTE inspite of failing in the written examination.

4. In 1981, the post of ASTE was declared to be a 'safety category' post, which meant that the candidates should be free from colour blindness apart from being medically fit. Though there were several subsequent examinations for promotion to the post of ASTE, the respondent did not participate. After 1976, the respondent, however, made several attempts to find a cure for the colour blindness and continued to consult various doctors in India and abroad.

5. When the respondent acquired a B.E. degree in the year 1998, he was sent for medical examination for being empanelled as an eligible candidate for Group 'B' promotion. The report of Medical Board was favourable. He was therefore promoted as Asst. Works Manager on *ad hoc* basis on 24.9.1998. Thereafter the respondent gave representations dated 28.12.1998 and 3.9.1999 contending that he was unjustly refused *ad hoc* promotion in 1976 on the ground of colour blindness and he should be given such promotion as ASTE with retrospective effect from 1976, as also all consequential promotions. As that request was not acceded, the respondent filed an application before the Central Administrative Tribunal, Chennai ('Tribunal' for short) in OA No.1267/1999 praying for a direction to the appellants to promote him to the post of Deputy Chief, S&T workshop Padanur, by granting him the several promotions to which he would have been entitled form 1976, if he was not colour blind. In the said application, he alleged that the medical examination carried out in the year 1976 was done carelessly and negligently, thereby denying him the opportunity of being promoted as ASTE on *ad hoc* basis; and that, therefore the appellants ought to redress his grievance by giving all promotions to which he was entitled and deserved on the basis of his seniority. According to him if he had been promoted as ASTE in the year 1976, by the year 1999, he

A would have secured several further promotions and reached the position of Deputy Chief, S&T Workshop. The said application was disposed of by the Tribunal by order dated 22.12.1999 with a direction to consider his pending representations seeking promotion.

B 6. In compliance with the said direction, the General Manager, Southern Railway considered his representation and sent the following communication dated 8.2.2000 to the respondent:

C "The old records have been traced out. They clearly reveal that you were having colour blindness, you also had accepted the same and had sought for permission to use "x-chrom" contact lens used for colour blindness available only in USA vide your letter dated 8.11.1976.

D Probably with correction of such defect in vision you could have been declared fit in the medical examination held in the year 1998.

E Ordinarily wearing of colour vision soft contact lens cannot be detected by naked eye examination. On further examination it is possible to confirm this. Accordingly, it is proposed to direct you for a special medical examination by a committee to be appointed by CMD shortly."

F 7. Respondent again approached the Tribunal by filing OA No.460/2000 for quashing the order dated 8.2.2000 and seeking a direction to the appellants to promote him to the post of Deputy Chief, S&T Workshop with retrospective effect from 1991 when his promotion to the said post became due. In this application, he reiterated the averments and contentions made in the earlier application (OA No.1267/1999).

G 8. In the meanwhile, the respondent was sent for medical examination to the Medical Director, Souther Railway Hospital, Perambur, as decided in the order dated 8.2.2000, who in turn

referred him for a comprehensive testing for colour blindness. A team of Experts in Shankara Netralaya, a renowned eye centre in Chennai examined him, using the latest equipments and found his colour blindness to be minimal, which would not interfere or affect his work. A

9. The Tribunal dismissed the respondent's application (OA No.460/2000) by order dated 18.10.2000. The Tribunal held that if the respondent was aggrieved by his non-promotion as ASTE on *ad hoc* basis in the year 1976, he should not have kept quiet for more than 23 years and it was not open for the respondent to seek reopening of the issue in the year 1999-2000. The Tribunal also held that the medical examination in 1976 was only with reference to a proposed *ad hoc* promotion for a temporary period, and as the respondent had failed in the written examination for regular promotion in the year 1980 and thereafter failed to appear in any of the promotional examinations, he could not make a grievance in regard to non-promotion to the post of ASTE. B
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10. The respondent challenged the decision of the Tribunal in WP No.407/2001. During the pendency of the writ petition the respondent was given a promotion as ASTC on 22.11.2002 and he retired from service on 30.4.2003. A division bench of the Madras High Court ultimately disposed of the said writ petition by the impugned order dated 10.3.2004 recording the following findings: E
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(a) Colour blindness is incurable. The finding in 1998 and 2000 that the respondent was not colour blind, led to an inference that the earlier diagnosis in 1976 that he was colour blind, was erroneous. G

(b) But, even if he had been found to be not colour blind and medically fit in the year 1976, the respondent would have held the position of ASTE only on *ad hoc* basis, till regular promotions were made. Unless he succeeded in the regular written examination and fulfilled the minimum H

A standards for promotion, he would not have been promoted as ASTE on regular basis. The respondent failed in the examination held in the year 1980-81 even after relaxing the standards and therefore he would not have been promoted as ASTE even if he was not colour blind and therefore the contention of the respondent that he had lost further promotions could not be accepted.

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 C (c) The post of ASTE was categorised as a safety post in the year 1981; that as the safety of the persons who used the railways was of paramount importance, and the medical opinion was that the respondent was colour blind, it could not be said that the action of the appellants in not promoting him on *ad hoc* basis in the year 1976, was illegal. There was no *mala fides* on the part of the railways in not promoting him on *ad hoc* basis in 1976, and the appellants had not intentionally withheld any benefit legally due to the respondent.

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 E (d) Having regard to the nature and standard of eye testing equipments that were available in 1976, the opinion of the doctors that the respondent was colour blind, was rendered bonafide and could not be said to be on account of lack of competence or negligence and would not furnish any cause of action to the respondent for seeking any relief. The fact that more than two decades later, by using technologically advanced testing equipments, a team of Doctors in an internationally renowned hospital had found that he was not suffering from marked colour blindness, merely showed the second diagnosis was on account of comprehensive examination procedure with technologically advanced equipment available at that stage, and did not establish that the opinion in 1976 was *mala fide* or negligent.

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 H (e) However the respondent had been denied the opportunity of holding the higher post of ASTE on *ad hoc* basis from 1976-1981 on account of the medical opinion

of 1976. If he had been permitted to hold the post of ASTE on *ad hoc* basis from 1976 to 1981, he might have possibly succeeded in the examination held in 1980-81 and promoted as ASTE on regular basis. A

(f) As the respondent became aware of the fact that he was not colour blind only in the year 1998, his applications for relief filed in 1999 and 2000 could not be termed as suffering from laches. B

The High Court held that on account of the fact that diagnosis in 1976 had denied him advancement in his career it was necessary to compensate him for the loss of opportunity and mental agony and therefore directed the appellants to pay a sum of Rs. Two lakhs as compensation to the respondent. The said order is challenged in this appeal by special leave. C D

11. On the contentions raised, the following questions arise for our consideration:

(i) Whether the claim of the respondent ought to have been dismissed on the ground of delay and laches? E

(ii) Whether the order of the High Court calls for interference on the ground that the ultimate decision is contrary to the findings recorded by it? F

(iii) On the facts and circumstances whether the High Court was justified in awarding a compensation of Rs. Two lakhs to the respondent? F

Re: Question (i)

12. Section 21 of the Administrative Tribunals Act, 1985 prescribes the limitation for approaching the Tribunal. In this case the medical examination of the respondent and the non-promotion as *ad hoc* ASTE were in the year 1976. The respondent accepted the diagnosis that he was colour blind and H

A did not make any grievance in regard to his non-promotion. On
the other hand, he attempted to get treatment or correction
contact lenses from USA (to aid the colour blind to distinguish
colours correctly). On account of the non-challenge, the issue
relating to his non-selection in 1976 attained finality and the
B same issue could not have been reopened in the year 1999-
2000, on the ground that medical tests conducted in 1998 and
2000 showed him to be not colour blind.

13. It is well settled that anyone who feels aggrieved by
non-promotion or non-selection should approach the Court/
C Tribunal as early as possible. If a person having a justifiable
grievance allows the matter to become stale and approaches
the Court/Tribunal belatedly, grant of any relief on the basis of
such belated application would lead to serious administrative
D complications to the employer and difficulties to the other
employees as it will upset the settled position regarding
seniority and promotions which has been granted to others over
the years. Further, where a claim is raised beyond a decade
or two from the date of cause of action, the employer will be at
a great disadvantage to effectively contest or counter the claim,
E as the officers who dealt with the matter and/or the relevant
records relating to the matter may no longer be available.
Therefore, even if no period of limitation is prescribed, any
belated challenge would be liable to be dismissed on the
ground of delay and laches.

F 14. This is a typical case where an employee gives a
representation in a matter which is stale and old, after two
decades and gets a direction of the Tribunal to consider and
dispose of the same; and thereafter again approaches the
G Tribunal alleging that there is delay in disposal of the
representation (or if there is an order rejecting the
representation, then file an application to challenge the rejection,
treating the date of rejection of the representation as the date
of cause of action). This Court had occasion to examine such
situations in *Union of India v. M.K. Sarkar* [2010 (2) SCC 58]
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and held as follows:

“The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. x x x x x

When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

A Court or Tribunal, before directing ‘consideration’ of a claim or representation should examine whether the claim or representation is with reference to a ‘live’ issue or whether it is with reference to a ‘dead’ or ‘stale’ issue. If it is with reference to a ‘dead’ or ‘stale’ issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct ‘consideration’ without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect.”

We are therefore of the view that the High Court ought to have affirmed the order of the Tribunal dismissing the application of

A the respondent for retrospective promotion from 1976, on the ground of delay and laches.

Re: Question (ii)

B 15. The fact that the respondent was subjected to medical examination in 1976 and that he was found to be colour blind is not disputed. The respondent did not challenge his non-promotion as *ad hoc* ASTE or the medical report that he was colour blind. He appeared for the examination in 1980 and failed. According to him, in a subsequent medical examination
C in the year 1998, he was found to be normal and a further detailed medical examination in 2000 showed his colour blindness was minimal which would not affect discharge of his duties as ASTE. The respondent therefore wants the court to infer that the 1976 diagnosis of colour blindness was erroneous
D and he could not be made to suffer due to the negligence of the then Medical Board.

E 16. The High Court has found that qualified Medical Board had examined him in the year 1976 and rendered a bonafide opinion based on the results of the medical examination. The High Court also found that the tests conducted in the year 1998 and 2000, disclosed a different condition. The High Court found that the equipment used in 1976 was unable to diagnose the extent of colour blindness accurately; and the more sophisticated equipments available in 1998-2000 for testing,
F made it possible to measure and ascertain the exact extent of colour blindness. This is evident from the test report dated 11.3.2000.

G 17. We extract the relevant portion of the test report of Shankara Netralaya given on 11.3.2000 (extracted by the respondent in his counter affidavit):

"Colour vision test

H Ishihara's test, mainly now a days is used as a screening method. We do not do the other out dated lantern tests.

FARNS WORTH MUNSELL – 100 Hue test is the most advanced technique available for checking colour vision. A

He underwent colour vision test by Ishihara's charts, which showed normal response in both the eyes. He later underwent FARNS WORTH MUNSELL – 100 HUE TEST in both the eyes, *which showed a low error score suggestive of minimally impaired colour discrimination.* B

The error was felt to be due to the learning curve since FARNS WORTH MUNSELL – 100 HUE test is difficult to perform. We advice the patient to undergo repeat testing with FARNS WORTH MUNSELL – 100 HUE TEST in order to substantiate the diagnosis. C

But the patient refused to undergo the test next day as he felt that it was not required according to Railway norms for colour vision testing. This he has submitted in writing to us." D

(emphasis supplied)

Thus the 2000 test reiterated the 1976 diagnosis that respondent had impaired colour discrimination. But with the accuracy possible to attain by advanced equipment, the initial tests showed that the degree of colour blindness was marginal. But the respondent refused to undergo further tests to ascertain and confirm the actual extent of colour blindness. The above report makes it clear that the medical report of 1976 was neither erroneous nor the result of any negligence. We make it clear that even if the test report of 2000 had demonstrated that the test report of 1976 was erroneous, it would not be possible to attribute any negligence or carelessness in regard to the earlier medical opinion or report, as subsequent test results were recorded by using equipment based on scientific and technological advances, which were not available at the time of earlier tests. E
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A 18. In view of the clear findings by the High Court that the
medical opinion of 1976 was bonafide and that even if the
respondent had been found medically fit in 1976, without
passing the written examination in 1980 or thereafter, he could
not have been promoted as ASTE on regular basis. The entire
B case of respondent becomes untenable. There was no
negligence or arbitrariness either in regard to the Medical
Examination or in regard to his non-promotion to an *ad hoc*
position in 1976. No injustice has occurred in the case of
respondent.

C Re: Question (iii)

19. The prayer in the petition was for retrospective
promotion. The High Court found that appellant was not entitled
to such promotion. The High Court also held that what was
D denied was only an *ad hoc* promotion and found that the
respondent failed in the written examination in the year 1980
and therefore would not have been entitled to regular promotion,
even if he was not colour blind. The failure to promote the
respondent on *ad hoc* basis in 1976 had no bearing on his
E chances of regular promotion. At all events the rejection of his
candidature for *ad hoc* promotion was for justifiable reasons.
Therefore the High Court was not justified in granting
compensation on a vague assumption that respondent had
suffered loss of opportunity and mental agony on account of
F what transpired in 1976. Sympathy cannot erase the clear
principles of law and findings of fact, or the effect of delay and
laches.

20. We, therefore, allow this appeal, set aside the order
of the High Court and restore the order of the Tribunal
G dismissing the original application filed by the respondent. If any
terminal benefits are withheld in view of this litigation, the same
should be released without further delay if there is no other
objection/claim.

H R.P.

Appeal allowed.