

**COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 2048/2024

**Sub Lt (SDP) Ram Chander Jain (Retd.) Applicant
VERSUS
Union of India and Ors. Respondents**

**For Applicant : Applicant-in-Person
For Respondents : Ms. Nehal Jain, Advocate
Cdr Rajat Gupta, Navy**

WITH

OA 2042/2024

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VERSUS
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CORAM

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

ORDER

The original applications, OA 2042/2024 and OA 2048/2024 are arising out of same set of facts, hence are being decided together. The OA 2048/2024 is



filed seeking (i) promotion to Lt. (SDP) Rank wef 30.09.1996 (ii) for release of salary in LT (SDP) Rank for the period 30.09.1976 to 30.11.1976 alongwith interest. Whereas, in OA 2042/2024, the claim of the applicant is with regard to pension as available to Sub Lt (SDP) Rank Commissioned Officer under Navy (Pension) Regulations.

2. The brief facts (common in both the applications (OA 2042/2024 and OA 2048/2024) are as under:

The applicant was enrolled as an Artificer Apprentice (trainee) in Indian Navy from 22.08.1959 to 23.08.1963. Subsequent to the completion of his training he was advanced to the post of Electrical Artificer Power V class w.e.f. 24.08.1963. He was promoted to class IV on 24.08.1964 and thereafter to class III on 08.06.1966, wef 1969, the applicant was promoted to Master Chief Electrical Artificer Power Class II. He was thereafter promoted on 30.09.1971 and confirmed to the rank of Acting Sub Lt (SDP) on

30.09.1972 and continued the rank till he was permitted to pre-maturely retire (on his own request) from service on 01.12.1976. As admissible under the rules, the applicant availed the 6 months leave pending retirement, and was on leave on 30.09.1976. The applicant thus completed 12 yrs 1 month and 7 days of Lower Deck Service and 5 yrs, 2 months of Commissioned Service. As the qualifying service of applicant fell short of minimum qualifying service, which is required to earn Service Pension under Regulation 78 of Navy Pension Regulations 1964, he was held non-entitled for grant of pension and gratuity as a Sailor.

3. Aggrieved thereby, the applicant preferred a Writ Petition bearing CW No. 118 of 1978 before the Hon'ble Delhi High Court, seeking pension and death cum retirement gratuity to the rank of Master Chief Electrical Artificer Power-II. The Writ Petition of applicant was allowed vide judgment dt 28.10.1980 with direction to the respondents to calculate and

pay pensionary and other benefits which may be due to the applicant, except those benefits which have already been allowed to him, on the basis that he was in service as a 'Seaman' wef 22.08.1959.

4. The aforestated judgment dt 28.10.1980 was however, set aside and the Writ Petition was dismissed by the Division Bench of the Hon'ble Delhi High Court in the Letter Patent Appeal (LPA) No. 48 of 1981 vide order dt. 08.12.1983. It was however, made clear that notwithstanding the decision of Letter Patent Appeal (LPA), the benefit already been given to the applicant (respondent therein) by the appellant Union of India would remain unaffected and he would remain entitled to the benefit of the judgment under appeal. Pursuant to the order dt. 07.04.1981 passed in Letter Patent Appeal (LPA) No. 48 of 1981, as a special dispensation which was not to be quoted as a precedent, applicant was sanctioned Service Pension in the rank of Sailor (MC EAP-II).

5. Thereafter 48 years of his retirement, the applicant vide a legal notice dt. 08.06.2022 (to the respondents) sought a revised Pension Payment Order (PPO) as applicable to the Commissioned Officer (Sub Lt Rank). This was duly replied by the respondents vide letter dt. 28.06.2022, intimating that his request for grant of pension as Commissioned Officer can't be acceded to as there is no provision in Navy (Pension) Regulation for condonation of shortfall in qualifying service in case of officers. It was also pointed out that all the pensionary benefits in view of the judgment of the Division Bench of the Hon'ble Delhi High Court dt 08.12.1983 in LPA 48/81 has already been granted to him.

7. The applicant not satisfied by the reply of respondents, again approached the Hon'ble Delhi High Court by way of another WP No. 489/2023, this time seeking the pension as applicable to a Commissioned Officer. An objection regarding

maintainability was raised by the respondents and the WP was disposed off, giving liberty to the applicant to approach the appropriate forum within one month from the said order.

8. Pursuant to which the instant applications OA 2042/2024 and OA 2048/2024 have been filed.

9. According to applicant he was commissioned in the rank of Sub Lt (SDP) on 30.09.1971 and completed 5 years of service on 29.09.1976. He thus became due and eligible for promotion on 30.09.1976 alongwith other similarly placed officers. He was permitted to retire from service wef 01.12.1976 vide NHQ letter R/S 2827/76 dt. 03.06.1976 and permitted to avail the 6 months leave prior to his retirement i.e. 01.12.1976 as such he was on leave on 30.09.1976, the date when he allegedly became due for promotion.

10. Per contra the contention of the respondents is that the instant application not only suffers from delay and laches but also barred under the provision

of Order II Rule II of CPC, hence liable to be dismissed. Referring to letter dt. 03.06.1976 (Annexure P1) it is contended that applicant was retired wef 01.12.1976 on his own request. This application seeking promotion is filed after a long delay of 48 years without any valid explanation and barred by law of limitation. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of **C. Jacob Vs. Director of Geology and Mining** [(2008) 10 SCC 115] and the relevant extract of the case of **N. Balakrishnan Vs. M. Krishnamurthy**, (1998) 7 SCC 123.

11. It is further contended that applicant has earlier filed WP No. 118/1978 before the Hon'ble High Court of Delhi for grant of pension in the rank of Master Chief Electrical Artificer Power II, at that time despite clear opportunity, he did not raise the claim for promotion, or officer rank pension for reasons best known to him hence, the instant claim is barred

under Explanation IV to section 11 of CPC and Order II Rule II of CPC.

12. After hearing the parties at length and on consideration of the documents on record and the judgment cited, we are of the opinion that both these original applications deserves to be dismissed.

13. As far as claim for promotion in OA 2042/2024 is concerned, the same is hopelessly barred by limitation having been raised after 48 years of his premature retirement. The cause of action, if any, accrued to the applicant on 30.09.1976 when he became due for promotion as alleged or within reasonable time thereafter. Mere submission of representation to Competent Authority that too after 48 years of his retirement does not arrest time and will not give rise to a fresh cause of action to the applicant.

14. In the case in **C. Jacob Vs. Director of Geology and Mining** [(2008) 10 SCC 115] Hon'ble Supreme Court of India held that "***a dead or stale***

claim is not permitted to be revived. The person who sleeps over his right is not entitled for any indulgence."

15. Similarly, in the case of **N. Balakrishnan Vs. M. Krishnamurthy**, (1998) 7 SCC 123, Hon'ble Supreme Court of India held that:

"11. Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

16. In the case of **State of Uttarakhand Vs Shiv Charan Singh Bhandari** (2013) 12 SCC 179, Hon'ble Supreme Court of India in para 24, 28 and 29 has observed as under:

24. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of J&K.

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.

29. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that

they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, has it been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.

17. As regards the claim of pension as applicable to Sub Lt (SDP), rank, from the narration of facts in the preceding paragraphs, it is evident that the applicant had completed only 12 years 1 month and 7 days of Lower Deck Service and 5 years 2 months of Commissioned Service. He was not having minimum qualifying service for consideration for pension to the rank of Commissioned Officer. Furthermore, applicant is already in receipt of pension in the rank of Sailor (MC EAP-II) as special dispensation as per the directions of Hon'ble Delhi High Court in LPA No. 48 of 1981. The applicant had clear opportunity to raise the claim for promotion as well as for officer rank pension, during the earlier proceedings but he failed to do so,

hence the instant claim of applicant either for promotional benefits or for grant of officer rank pension is barred by **constructive res judicata**. The Law on Constructive *res judicata* was considered in the case of **Samir Kumar Majumdar v. Union of India** (2023 SCC online SC 1182 and the Hon'ble Supreme Court held as under:

Under:

33. Almost two centuries ago, in Henderson Henderson, (1843) 3 Hare, 100, the Vice-Chancellor Sir James Wigram felicitously puts the principle thus:-"In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of

litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time....."

34. This principle popularly known as the doctrine constructive res judicata, based on the might and ought theory, has been recognized by this Court in several judgments. In Maharashtra Vikrikar Karamchart Sangathan vs. State of Maharashtra and Another, (2000) 2 SCC 552, this Court "22. It was then contended on behalf of the appellants that neither the Recruitment Rules of 1971 nor the Seniority Rules of 1982 provided for carrying forward the vacancies falling in either category. In the absence of such rules which specifically provide for carrying forward the vacancies fulling in either category, no such carry-forward rule could be implied either in the Recruitment Rules or in the Seniority Rules. This contention need not detain us any longer because such a contention was available to the appellants in the earlier proceedings, namely, Transfer Application No. 822 of 1991 and the same was not put in issue. That not having been done, it must follow that such a contention is barred by the principles of constructive res judicata. Neither the contesting respondents nor the appellants ever raised this contention at any stage of the proceedings in Transfer Petition No. 822 of 1991.

18. In view of the aforesaid analysis of the settled law both the original application OA 2048/2024 and

OA 2042/2024 are found devoid of merits and hereby dismissed.

19. Miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on 1st August, 2025.

**[JUSTICE NANDITA DUBEY
MEMBER (J)]**

**[REAR ADMIRAL DHIREN VIG
MEMBER (A)]**

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