

# Ram Sharan vs Indian Oil Corrrorate Ltd And Anr on 28 October, 2021

**Author: V. Kameswar Rao**

**Bench: V. Kameswar Rao**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 12261/2021 & CM. No. 38368/2021  
RAM SHARAN

..... Petitioner

Through: Mr. Manoj Gorkela and  
Ms. Preeti Nair, Advs.

versus

INDIAN OIL CORRORATE LTD AND ANR.

..... Respondents

Through:

CORAM:  
HON'BLE MR. JUSTICE V. KAMESWAR RAO  
ORDER

% 28.10.2021 CM No. 38368/2021 (for exemption) Exemption allowed subject to all just exceptions.  
Application stands disposed of.

W.P.(C) 12261/2021

1. The present petition has been filed by the petitioner with the following prayers:

"Wherefore it is most humbly prayed that this Hon'ble Court may kindly be pleased to:

a) To issue appropriate order / direction / mandamus to upgrade the Annual Confidential Reports/e PMS (Employee Performance Management System) of the Petitioner for the relevant years so that he may be given his promotions up to the level of ED from the date when the same were due i.e. in the years 1994, 1998, 2002, 2005, 2009, 2013 and 2017 with consequential monetary and other back benefits;

b) To issue appropriate order/ direction / mandamus to accept the claim of 108 Compensatory offs earned on performing of 12 hrs. continuous Duty on a planned rota, should be given as per policy Circular No. 2006/HR/82;

c) To give the Petitioner relief by way of credit of 57 days to his Earned Leave account as compensation;

d) To constitute a Committee of former judges of this Hon'ble Court who may examine the status of SC/ST employees of all Public Sector Units and submit its report before this Hon'ble Court;

e) Pass such other order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in hand."

2. In substance, the grievance of the petitioner is primarily his non- promotion up to the level of Executive Director from the date when the same were due between the years 1994-2017.

3. It is the case of the petitioner that he is a Graduate in Civil Engineering who got appointed as an Officer Trainee in Grade A in the respondent / Corporation, in 1984. The next promotion post was that of Grade B to which he was promoted in the year 1990. It is his case that he was promoted to Grade C in the year 1995 whereas his batchmate R.S. Dahiya was promoted in the year 1994. I have seen from page 54 of the writ petition, the petitioner was promoted to the next higher grades i.e., Grade D in 2001, Grade E in 2006 and Grade F in 2014.

4. It is his case that he retired from the services of the respondent / Corporation in the year 2018. It is the submission of the learned counsel for the petitioner, that the petitioner was denied promotion to the aforesaid Grades only because he belongs to the reserve category. Various submissions have been made by the learned counsel for the petitioner that the petitioner's performance was lauded by the Officers and his performance was satisfactory which is reflected in the appraisal reports. But I find that the performance appraisal reports of the petitioner are the following:

Grade	Year	Petitioner
B	1990	Satisfactory
C	1995	Satisfactory
D	2001	Satisfactory
E	2006	Satisfactory
F	2006	Satisfactory
G	2014	Satisfactory
H	-	
I	-	

5. Apparently, the prayers as made by the petitioner seeking his promotion from the year 1994 is clearly hit by delay and laches. In fact, the petitioner was denied promotion to Grade C on due date in the year 1994 itself as it is his own case that he was promoted in that grade in the year 1995. In fact, the eligibility for promotion to Grade D though four years the same was delayed by six years. Similar is the position in the further higher grades. The petitioner having not challenged his non-promotion on time in the year 1994 rather accepting the same in the year 1995 and also in the years 2001, 2004, 2006 and 2014 he cannot now seek the relief as sought for in the writ petition. No doubt, the petitioner had approached the Supreme Court by way of a writ petition which writ petition was disposed of by the Supreme Court directing the petitioner to approach the High Court i.e., this Court, even that petition was filed in the year 2019 which is after almost 25 years from the year of eligibility to Grade C in the year 1994. The appraisal reports as highlighted above, can be the

factors, resulting in his non- promotion in the above years. In any case, the petitioner has not challenged his appraisal reports in these proceedings. The law with regard to the challenge to the promotion after such a long period of time is well settled, the Supreme Court in the case of State of Uttaranchal v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179, while dealing with similar facts where the petitioner therein had approached the Court seeking promotion after long period of time, the Court held as under:

"16. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the Tribunal only in 2003. It is clear as noonday that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15-11-1983.

17. In C. Jacob v. Director of Geology and Mining [C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115] a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the Court has expressed thus:

"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."

18. In Union of India v. M.K. Sarkar [(2010) 2 SCC 59] this Court after referring to C. Jacob [C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115] has ruled that:

"15. 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 cannot 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."

19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

20. In Karnataka Power Corpn. Ltd. v. K. Thangappan [(2006) 4 SCC 322] the Court took note of the factual position and laid down that when nearly for two decades the respondent workmen therein had remained silent mere making of representations could not justify a belated approach.

21. In State of Orissa v. Pyarimohan Samantaray [(1977) 3 SCC 396] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik [(1976) 3 SCC 579] .

22. In BSNL v. Ghanshyam Dass (2) [(2011) 4 SCC 374] a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana [(1997) 6 SCC 538] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the Tribunal in 1997, they would not get the benefit of the order dated 7-7-1992 [Santosh Kapoor v. Union of India, OA No. 1455 of 1991, order dated 7-7-1992 (CAT)].

23. In State of T.N. v. Seshachalam [(2007) 10 SCC 137] , this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:

"16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

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 [(2009) 15 SCC 321] .

25. In NDMC v. Pan Singh [(2007) 9 SCC 278] the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

26. Presently, sitting in a time machine, we may refer to a two- Judge Bench decision in P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152], wherein it has been laid down that:

"2. ... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the Tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion.

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."

(emphasis supplied)

6. In a recent judgment in the case of Subrat Kumar Panigarhi v. Hindustan Petroleum Corporation Limited & Ors., W.P.(C) 4005/2020 dated August 06, 2021, wherein the petitioner had sought promotion after a long period of time this Court has held as under:

"8. Having said that, even the prayer of the petitioner, in the alternative that his case for promotion to Grade „C be considered w.e.f. 2004 shall also be hit by delay and laches. The petitioner having not approached the Court of law immediately after 2005 when he was promoted, and knowing the fact that his promotion relates from the year 2005 and not retrospectively, i.e., 1997-1998, still he went on making representations and not approached the Court and took a risk, which shall not answer the delay of 15 years to approach the court, which in any case shall also be hit by delay and laches."

7. The plea of the learned counsel for the petitioner is, the petitioner did not approach this Court during his tenure being apprehensive, that the officers, may take coercive action with relation to his employment, does not appeal to the Court. The very fact that the petitioner had approached the Supreme Court and this Court in the years 2019 and 2021 respectively, he could have approached the Court even in the year 1994 / 1995 and even subsequently.

8. As noted from the prayer clause, the petitioner is seeking his promotion to the level of Executive Director. There cannot be any denial to the fact that many persons junior to him would have also been promoted prior to him and they would have also got further promotions to the higher posts. The grant of relief as prayed for by the petitioner shall have serious repercussion on the promotion and seniority of the officers. Even the other prayers sought are hit by delay and laches.

9. That apart, I find there is no justifiable explanation given by the petitioner for approaching this Court at this stage. I do not see any merit in the petition on the ground of delay and laches, the same is dismissed.

V. KAMESWAR RAO, J OCTOBER 28, 2021/aky