

# Subrat Kumar Panigrahi vs Hindustan Petroleum Corporation ... on 6 August, 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) 4005/2020  
SUBRAT KUMAR PANIGRAHI ..... Petitioner

Through: Mr. Alakh Alok Srivastava and  
Mr.Chandan Kumar Singh, Adv.  
with petitioner in person.

versus

HINDUSTAN PETROLEUM CORPORATION LIMITED & ORS.

..... Respondents

Through: Mr. Sachin Datta, Sr. Adv. with  
Ms. Das, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO  
ORDER

% 06.08.2021 This matter is being heard through video-conferencing. CM Nos. 24706-24707/2021  
Exemption allowed subject to all just exceptions. The applications stand disposed of.

CM No. 24705/2021

1. This application has been filed by the petitioner for seeking modification of para 2 of order dated July 28, 2021, passed by this Court, by which I had dismissed the writ petition. In para 2 of the said order I had stated the following:

"At the outset, learned counsel for the petitioner would submit that he shall confine the petition to challenge the Adverse Performance Rating of '3' for the year 2018-19. In other words, he shall not press the prayer made with regard to his performance rating for the year 1996-97 and grant of promotion thereafter including his prayer for retrospective promotion to Grade 'C' with effect from 2004."

2. It is the case of the petitioner, in this application, that his counsel never submitted that he shall confine the challenge to the adverse performance rating '3' for the year 2018-2019 and shall not press the prayers made with regard to the performance rating for the year 1996-1997 and grant of promotion thereafter including the prayer for retrospective promotion to Grade 'C' w.e.f. 2004 instead of 2005. At the outset, I may state here when the matter was called, Mr. Sachin Datta, learned Senior Advocate, who argued the case for respondents on July 28, 2021 being busy elsewhere, I deemed it appropriate to pass over the matter and call for Mr. Datta. On the appearance

of Mr. Datta, I asked to him to make his submissions on the application. Mr. Datta states that the application is not a correct narration of the proceedings transpired on July 28, 2021, and the Court has rightly recorded in para 2 what has been stated therein.

3. I find, the narration in the application is the depiction of the proceedings as perceived by the petitioner and not by his counsel, who had argued the case before this Court with clarity and knowing purport of his each submission. This application is only accompanied by the affidavit of the petitioner and not of the counsel, who made the submissions.

4. Be that as it may, I deem it appropriate to hear the counsel for the petitioner even on the prayer 'd' which is the petitioner's challenge to adverse performance rating '4' for the year 1996-1997 and to upgrade the same to rating '1' with, consequential direction to conduct a review DPC to consider his promotion to Grade 'C' with retrospective w.e.f. 1998 or in the alternative to conduct a review DPC to Grade 'C' w.e.f. 2004 and not from 2005.

5. It is a conceded case of the petitioner in the writ petition that he was promoted to Grade 'D' in the year 1994. The next grade for promotion is Grade 'C' for which the eligibility period was three years in the grade. The petitioner was not promoted between the years 1997-2004. It is a fact that the petitioner was promoted to Grade 'C' in the year 2005. On a query to Mr. Srivastava whether the petitioner had challenged his non-promotion / denial of promotion to Grade 'C' between the years 1997-2004 in any Judicial forum, the answer is in the negative. In other words, the petitioner did not challenge his non-promotion to Grade 'C' from 1997-2004. It is only in the year 2019 that the petitioner had filed W.P. (C) 2941/2019 for grant of promotion to him from Grade 'B' to Grade 'C' from the year 1997 and further grant of promotion from Grade 'C' to Grade 'D' from the year 2000. The justification given by Mr. Srivastava is that the petitioner was making representations from time to time for grant of promotion to Grade 'C' w.e.f. 1997/1998. It is his submission that, in the reply filed to the writ petition of 2019, the respondents for the first time taken a stand about the performance rating for the year 1996-1997 as '4', which according to him was an adverse rating, and this adverse rating was required to be communicated. Hence, the petitioner having got the knowledge only in the year 2019, he has approached this Court immediately thereafter with this writ petition in 2020 by withdrawing the writ petition of 2019.

6. I am not impressed with the submission of Mr. Srivastava for the reason that the petitioner, who was not granted the promotion to Grade 'C' in the year 1997/1998, had not approached the Court of law immediately thereafter. If he had approached, the respondent could have justified, the denial of promotion of the petitioner by relying upon the performance rating of '4' though an adverse rating as per petitioner. The law is well settled even before the Judgment of the Supreme Court in Devdutt's case that adverse ACR need to be communicated to the concerned officer. Since, the petitioner had not challenged his non-promotion / denial of promotion to Grade 'C' in the year 1997/1998 till 2019, there was no occasion for the respondents to highlight the performance rating of '4'. He even on getting his promotion in 2005 has not challenged / contested why he has been given promotion only in 2005 and not earlier. But the filing of petition in 2019 is too late in the day for the petitioner to agitate his non-promotion between 1997-2004. The challenge to the performance rating '4' and also seeking consequential benefits for grant of promotion to Grade 'C'

w.e.f. 1997 or 2004 in the year 2019 or in the year 2020 is clearly hit by delay and laches.

7. So, the plea of the learned counsel of the petitioner, that he having come to know about the performance rating '4' for the years 1996-1997 in 2019, would not give a cause of action to the petitioner to challenge the said performance rating and also seek promotion from 1997 / 1998, after almost 21-22 years. If he had approached the Court in 2019, he could have approached the Court between 1997-2004 or even in 2005 or immediately thereafter. The plea of the learned counsel for the petitioner, that the petitioner has been making representations with regard to denial of promotion, is also not appealing as it is settled law that continuous representations shall not extend the limitation. Though, limitation is not applicable to writ proceedings, even then same shall not explain the delay in approaching the Court after 21-22 years. In fact, the same would also not explain the delay of 21-22 years when during the intervening period many his juniors have got promotion not only to Grade 'C' but even to further higher posts, and right has accrued in their favour and the knowledge of this fact cannot be denied by the petitioner. I reproduce hereunder the years when the petitioner's case was considered for promotion to Grade "C" and was not promoted as depicted by the respondents in their counter-affidavit, as under: -

DPC Previous 3 Rating Seniority Total Cut Off Remarks Year Years' Marks Marks
Marks Marks Ratings Feb-97 3 2 1 45 24 69 75 Not Promoted, could not secure
cut-off marks Mar-98 2 1 4 40 32 62 75 Not Promoted, could not secure cut-off marks
Apr-99 1 4 4 30 40 70 75 Not Promoted, could not secure cut-off marks Apr-00 4 4 3
20 40 60 75 Not Promoted, could not secure cut-off marks Sept-01 4 3 3 25 40 65 75
Not Promoted, could not secure cut-off marks Jun-02 3 3 4 25 40 65 75 Not Ready, in
view of previous '4' rating Mar-03 3 4 4 20 40 60 75 Not Ready, in view of previous
'4' rating Mar-04 4 4 3 20 40 60 75 Not Promoted Apr-05 4 3 2 30 40 70 75
Promoted,

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.

9. The law in this regard is well settled. I may refer the judgment of the Supreme Court in State of Uttaranchal v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179, wherein it was 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."

10. Mr. Srivastava, with regard to the prayer 'e', fairly states that in view of the fact that this Court had rejected the prayers 'a' to 'c' vide order dated July 28, 2021, this prayer has become infructuous.

11. If that be so, I do not find any merit with regard to the prayer 'd' of the petition. The petition with regard to prayer "d" is also rejected. No orders are required to be passed in this application.

V. KAMESWAR RAO, J AUGUST 6, 2021/bh/jg