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**IN THE HIGH COURT OF SIKKIM AT GANGTOK**  
(CIVIL EXTRAORDINARY JURISDICTION)

**Writ Petition (C) No. 34 of 2009**

1. Union of India  
Through the Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi-110 001.
  2. Director General,  
Sashastra Seema Bal,  
East Block-V,  
R.K. Puram,  
New Delhi-110 066.
- ...Petitioners

-Versus-

Shri Tekman Sunar,  
S/o Shri P.B. Sunar,  
O/O the Dy. Inspector General  
Sector Hqrs SSB, Purnia,  
Head Post Office Purnia,  
District-Purnia (Bihar)  
Pin Code No. 854 301.

...Respondent

**For Petitioner** : Mr. Karma Thinlay, Central Government  
Counsel.

**Date of Hearing** : 02.11.2009

**Date of Judgment** : 02.11.2009

**PRESENT :** HON'BLE THE CHIEF JUSTICE  
MR. JUSTICE AFTAB H. SAIKIA  
HON'BLE MR. JUSTICE A.P. SUBBA, JUDGE

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**JUDGMENT AND ORDER (ORAL)**

***Saikia, CJ***

Heard Mr. Karma Thinlay, learned Central Government Counsel for the petitioners Union of India and another.

2. Having heard the learned Counsel for the Petitioner as well as upon careful consideration of the materials made available on record itself we do propose to dispose of this writ petition today itself at the motion stage.

3. The orders dated 08.05.2007 in No. O.A. 2/SKM/2003 and 05.07.2007 in No. M.A. 2/SKM/2007 arising out of O.A. 2/SKM/2003 passed by the Central Administrative Tribunal, Calcutta Bench (for short, 'the Tribunal') have been assailed in this writ application filed under Articles 226/227 of the Constitution of India.

4. Basic facts in brief are that the Respondent herein was reverted by order dated 23.10.2003 from the post of Assistant Field Officer (Veterinary) to a substantive post of Senior Field Assistant (Veterinary) and one T.C. Arya was promoted to the post of Assistant Field Officer (Veterinary). This reversion of the Respondent was made admittedly after 7 years of his promotion to the said post without giving him any opportunity of hearing.

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5. Being aggrieved by such order of reversion, the Respondent initially approached the Tribunal which by its order dated 20.04.2006, protecting the interest of the Respondent herein, directed the Official Respondents i.e. the Union of India and another to pass necessary formal order of promotion to the Respondent in the grade of Assistant Field Officer (Veterinary).

6. That order of the Tribunal was challenged by the Union of India before this High Court by initiating a writ proceeding being Writ Petition (C) No. 49 of 2006.

7. This Court by order dated 02.03.2007 observed that the Tribunal failed to consider the issue in question with regard to the claim of one T.C. Arya for promotion, who was not made a party, though being a necessary party in the proceeding. Consequently the order of the Tribunal dated 20.04.2006 was quashed with a direction to implead the said T.C. Arya as a Respondent and to decide the entire matter by the Tribunal accordingly.

8. The case went back to the Tribunal and the said Arya was impleaded as a party Respondent therein. The Tribunal by way of fresh proceeding, after hearing the learned Counsel for the parties, disposed the original application by the impugned order dated 08.05.2007, directing the Official Respondents to create a supernumerary post, if necessary, to adjust the Respondent herein

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at Gangtok in the post of Assistant Field Officer (Veterinary) from the date he was entitled to get such promotion according the Rules.

9. The findings of the Tribunal recorded in the relevant paragraphs of the impugned order have been quoted as under:

“10. Mr. J.M. Bhattacharjee, Id. Counsel for the official respondents has very fairly conceded before us that seniority of the applicant, which was finalised in the year 1994, has been revised and he has been placed below Shri T.C. Arya in the year 2003 i.e. after about 9 years of the publication of the original seniority list. He has also admitted that the applicant was sought to be reverted because of such revision of seniority position, after 7 years of his regular promotion in the year 1996. In such circumstances, he has submitted that the respondent department is also sympathetic to the applicant and, therefore, has been adjusted against a post having been diverted from Patna region. It is also disclosed that Shri Arya has also been given promotion as AFO on proforma basis and his pay has been fixed notionally w.e.f. the date of promotion of his junior, but he has not been paid pay and allowances for the period he has not worked in the higher post. In view of the order of the Hon'ble High Court he has suggested in consultation with the representative of the respondent department that they may consider issuing formal order of promotion to the applicant by creating a supernumerary post. In that event, nobody's interest will be hampered.

11. In view of such fair submission of the Id. Counsel for the official respondents we dispose of this O.A. by directing the respondents to create a supernumerary post, if necessary, to adjust the applicant at Gangtok in the post of AFO(V) from the date he is entitled to get such promotion according to the rules. Be it noted that we have not considered the issue of seniority of the applicant vis-à-vis Shri T.C. Arya, which has been unsettled after long years it was originally finalised. That point is kept open.”







**10.** Having dissatisfied with such findings recorded in order dated 08.05.2007 of the Tribunal, the Union of India and another/the Petitioners herein approached the Tribunal again seeking modification of the said order vide Modification Application being No. M.A. 2/SKM/2007. However, the Tribunal by its order dated 05.07.2007, after hearing the learned Counsel for the parties, dismissed the said Miscellaneous Application as being devoid of merit.

**11.** Concededly this writ petition has been filed on 15.10.2009 impugning orders dated 08.05.2007 and 05.07.2007 after a gap of more than 2 (two) years.

**12.** On pointed asking as regards such inordinate delay in preferring this writ petition, the learned Central Government Counsel, drawing our attention to paragraphs 8 to 33 of the instant writ petition, has submitted that the delay in question was not at all intentional and wilful. It was however due to the protracted correspondences made with the offices of the Department functioning at various places, i.e. Gangtok, Ranidanga in the State of West Bengal, Kolkata, Patna and New Delhi so as to get appropriate instructions as regards the filing of this petition before the High Court. Eventually, according to Mr. Thinlay, Law Ministry at New Delhi has given the approval for preferring this writ petition and thereafter this petition has been filed. In that view of the





matter, it is submitted that the explanations narrated in those paragraphs as mentioned above may be accepted.


**13.** That the statements made in those paragraphs 8 to 33 may be reproduced as under:


“8. That the copy of the impugned order dated 05.07.2007 in M.A. No. 2/SKM/07 passed by the Tribunal was received by the office of the Commandant on 22.08.2007 at Gangtok through Headquarter, Kolkata. Thereafter, on 24.08.2007 the Sector Headquarters, SSB, Ranidanga forwarded a copy of the judgment dated 05.07.2007 to Frontier HQ, SSB, Patna. A copy of the Fax No. VIII/0/HC/SKM/TS/06 dated 24.08.2007 is filed herewith and marked as Annexure P-20.

9. That on 31.08.2007 Assistant Director (Legal) of Force Headquarter SSB, New Delhi vide their letter dated 31.08.2007 addressed to the Frontier Headquarter, SSB, Patna with a copy of the Sector Headquarter, SSB, Ranidanga directed to liaise with Government Counsel so as to obtain opinion of the Ministry of Law, Kolkata with regard to the dismissal of the application for modification of order dated 08.05.2007 passed in O.A. 2/SKM/2003 for further necessary action. A copy of the Fax No. 49/SSB/LC-2003(II)-210 dated 31.08.2007 is filed herewith and marked as Annexure P-21.

10. That on 05.09.2007, Staff Officer, Sector Headquarters, SSB, Ranidanga vide their letter No. 7427 dated 05.09.2007 addressed to J.M. Bhattacharjee, Senior Counsel CAT, Kolkata requested the department to obtain legal opinion from the Ministry of Law, Kolkata so as to enable the department to proceed further with the matter. A copy of letter No. 7427 dated 05.09.2007 is filed herewith and marked as Annexure P-22.

11. That vide letter No. MA2/SKM/07/WP dated 12.09.2007 Shri J.M. Bhattacharjee, Senior Counsel requested Sector Headquarters, SSB, Ranidanga to





specify all the law points on which the department wishes to seek legal opinion from the Ministry of Law, Kolkata, West Bengal. A copy of letter dated 12.09.2007 written by Shri J.M. Bhattacharjee, Senior Counsel to Sector Headquarters, SSB, Ranidanga is filed herewith and marked as Annexure P-23.

12. That the Sector HQ, SSB, Ranidanga vide Memo No. VIII/CC/HC/SKM/TS/06-7669, dated 18.09.2007 forwarded relevant documents of the case to the 24<sup>th</sup> Battalion, SSB, Gangtok with the directions to hand over the same to the Central Government Counsel at Gangtok and to obtain his views. A copy of letter No. VIII/CC/HC/SKM/TS/06-7669 dated 18.09.2007 is filed herewith and marked as Annexure P-24.


13. That vide letter No. PF/AFO/VETY/TS/CC/06/19753-55 dated 28.09.2007, the opinion of the Central Government Counsel at Sikkim was sent to Sector Headquarters, SSB, Ranidanga by the Office of the Commandant 24<sup>th</sup> Battalion. A copy of letter No. PF/AFO/VETY/TS/CC/06/19753-55 dated 28.09.2007 along with a copy of the opinion of Central Government Counsel vide Ref. No. 0043/KTN/Legal/07 dated 28.9.2007 is filed herewith and marked as Annexure P-25 Colly.

14. That on 08.10.2007 Sector Headquarter, SSB, at Ranidanga vide letter No. VIII/CC/SKM/TS/06/8028 forwarded the opinion of Shri J.M. Bhattacharjee, Ld. Senior Counsel, CAT and Central Government Counsel, Gangtok to Frontier Hqrs, SSB, Patna to seek further opinion of the Ministry of Law at Kolkata. Copy of letter No. VIII/CC/HC/SKM/TS/06/8028 dated 08.10.2007 is filed herewith and marked as Annexure P-26.

15. That the Force Headquarters, SSB, at New Delhi had directed vide Fax No. 46/SSB/LC/2003(II)259 dated 09.10.2007 to the Frontier Headquarters at Patna to take necessary action as per the opinion of Central Government counsel at Gangtok and to seek the opinion of Ministry of Law, Kolkata in filing the appeal. A copy of Fax No. 46/SSB/LC/2003(II)259 dated 09.10.2007 is filed herewith and marked as Annexure P-27.

16. That also on 10.10.2007 vide Signal Message No. U/3250 of the Staff Officer, SSB, Ranidanga while






referring to a Fax Message No. CC/FTR/TS/SKM/03-05/287 dated 09.10.2007 of Frontier Headquarters dated 09.10.2007 requested Commandant, 24<sup>th</sup> Battalion to take action at the earliest as per the direction of the Frontier Headquarter on priority basis with regard to respondent's matter. A copy of signal message No. U/3250 dated 10.10.2007 is filed herewith and marked as Annexure P-28.


17. That on 15.10.2007 staff Officer (Admn), SSB, Ranidanga vide Fax message No. VIII/CC/HC/SKM/TS/06 enquired about the matter from the Commandant, 24<sup>th</sup> Battalion, SSB, Sikkim. A copy of Fax No. VIII/CC/HC/SKM/TS/06 dated 15.10.2007 is filed herewith and marked as Annexure P-29.

18. That vide Fax message No. 6188 dated 24.03.2008, the Second in Command for Commandant, 24<sup>th</sup> Battalion, SSB, Sikkim had provided information to Staff Officer (Admn) SSB, Ranidanga with regard to the respondent's matter. A copy of Fax message No. 6188 dated 24.03.2008 is filed herewith and marked as Annexure P-30.

19. That on 06.06.2008 the Force Headquarters, SSB, New Delhi vide Fax No. 46/SSB/LC/2003(II)/275 dated 06.06.2008 had enquired from the Inspector General, Frontier Headquarters, SSB at Patna, about the filing of appeal before the Hon'ble High Court against the order dated 5.5.07 passed by the Central Administrative Tribunal, Calcutta bench circuit at Gangtok. The said information was also transmitted to the Deputy Inspector General, SSB, Ranidanga and Commandant 24<sup>th</sup> Battalion SSB, Gangtok. A copy of fax No. 46/SSB/LC/2003(II)/275 dated 06.06.2008 is filed and marked as Annexure P-31.

20. That Frontier Headquarters, SSB, Patna vide fax No. LEGAL/FTRP/TS/SHQRDA/05/1125 dated 10.06.2008 had requested the Sector Headquarters, SSB, Ranidanga to convey information to FHQ under intimation to FTR HQR SSB, Patna regarding filing of appeal before the Hon'ble High Court of Sikkim and to confirm compliance. On 10.06.2008 itself, the Sector Headquarters, SSB, Ranidanga vide Fax Message No. VIII/CC/HC/SKM/TS/06 requested the Frontier







Headquarters, SSB to frame points on the basis of the opinion given by the Central Government Counsel, Sikkim which is further to be projected to the Ministry of Law, Kolkata. Copies of fax No. LEGAL/FTRP/TS/SHQRDA/05/1125 dated 10.06.2008 and Fax Message No. VIII/CC/HC/SKM/TS/06 dated 10.06.2008 is filed and marked as Annexure P-32 and P-33 respectively.

21. That the Frontier Hqrs, SSB, Patna vide fax No. Legal/CC/FTRP/TM/SKM/03-05-1160 dated 14.06.2008 had conveyed to the Sector Hqrs SSB, Ranidanga the displeasure of the Inspector General, Frontier Hqrs SSB, Patna towards for non submission of draft appeal and also directed to depute a responsible representative who was well conversant with the facts of the case along with relevant documents to approach the Ministry of Law, Kolkata for nomination of the Central Government Counsel and also for preparation of the draft appeal and to sent the same to Frontier Hqrs, SSB, Patna for getting the same vetted by the Department. A copy of vide fax No. Legal/CC/FTRP/TS/SKM/03-05-1160 dated 14.06.2008 is filed herewith and marked as Annexure P-34.

22. That vide letter No. 24<sup>th</sup> Battalion/Estt/PM/PPM/40/08/12061-63 dated 16.06.2008, the Commandant, 24<sup>th</sup> Battalion, SSB, Sikkim had intimated the Deputy Inspector General, SSB, Ranidanga, West Bengal about the meeting with the Central Government Counsel, Sikkim who had advised them to seek opinion from the Ministry of Law at Kolkata. A copy of letter No. 24<sup>th</sup> Battalion/Estt/PM/PPM/40/08/12061-63 dated 16.06.2008 is filed herewith and marked as Annexure P-35.

23. That on 20.06.2008, Sector Hqrs, SSB, vide letter No.VIII/CC/HC/SKM/TS/02180 had requested the Ministry of Law, Kolkata for engagement of Government Counsel to file an appeal petition before the Hon'ble High Court of Sikkim against the judgment dated 08.05.2007 and on 07.07.2007 itself vide letter No. PF/AFO/Vety/TS/Court Case/08/13870-72 a letter was received by the Central Government Counsel to defend the case and the same message vide fax message No.VIII/CC/TS/SKM/06 dated 11.07.2008 was intimated to SAO (legal) Frontier Headquarters, SSB,





Patna by Staff Officer (Admn) SSB, Ranidanga in this regard. Copies of letter No. Sector Hqrs, SSB, Ranidanga No. VIII/CC/HC/SKM/TS/02180 dated 20.06.2008, letter No. PF/AFO/Vety/TS/Court Case/08/13870-72 dated 07.07.2008 are filed herewith and marked as Annexure P-36, P-37.


24. In the meantime vide letter No. MOL UO No. 835/08-ADV(Cal) dated 09.07.2008, the Ministry of Law at Kolkata gave its legal opinion and same was received from the Sector Headquarters, SSB and Ranidanga. A copy of letter No. MOL UO No. 835/08-ADV(Cal) dated 09.07.2008 dated 11.07.2008 of the Ministry of Law at Kolkata is filed herewith and marked as Annexure P-38 and Annexure P-39.


25. That on 15.07.2008, the Central Government Counsel, Sikkim High Court gave his opinion to DIG, Sector Hqrs, SSB, Ranidanga about the matter.

26. On 16.07.2008, the Asstt. Commandant, 24<sup>th</sup> Battalion, SSB, Sikkim had forwarded the opinion of the Central Government Counsel, Sikkim to Staff Officer, Ranidanga vide fax message No. PF/AFO/Vety/TS/Court Case/07/146 dated 16.07.2008. A copy of the fax message No. PF/AFO/Vety/TS/Court Case/07/146 dated 16.07.2008 is filed herewith and marked as Annexure P-40 Colly.

27. The Assistant Director (Legal), Force Hqrs vide fax message No. 49/SSB/LC-2003(II)370 dated 31.07.2008 addressed to Frontier Hqrs, SSB, Patna had sought for explanation as to why there has been a delay in filing the appeal. A copy of fax message No. 49/SSB/LC-2003(II)370 dated 31.07.2008 is filed herewith and marked as Annexure P-41.

28. That on 01.08.2008 vide fax No. Legal/CC/FTRP/TS/07/2071 dated 01.08.2008, the Sub-Area Organiser (Legal), Frontier Hqrs, SSB, Patna had enquired about the matter from Sector Hqrs, Ranidanga about filing of the appeal before the High Court of Sikkim. A copy of fax No. Legal/CC/FTRP/TS/07/2071 dated 01.08.2008 is filed herewith and marked as Annexure P-42.







29. That from 07.08.2008 to 20.08.2008 the department exchanged communication with regard to the respondent's case and to submit a report. On 31.12.2008 on submission of the detailed report by the Office of the 24<sup>th</sup> Battalion, SSB at Gangtok, it was requested to Sector Hqrs, SSB, Ranidanga intimating whether this office was to close the case of the petitioner from the list of this 24<sup>th</sup> Battalion and discontinue submission of MPR/QPR. Copies of fax messages No. 237-38 dated 07.08.2008, No. VIII/CC/TS/SKM/06 dated 07.08.2008, letter No. E-1/CC/TKS/08/15822-23 dated 09.08.2008, letter No. Legal/CC/FTRP/TS/SKM/03-05/2133 dated 20.08.2008 and PF/AFO/Vety/TS/Court Case/08/1918 dated 31.12.2008 is filed herewith and marked as Annexure P-43, P-44, P-45, P-46 and P-47.

30. On 11.02.2009, a copy of the Office Order No. 49/SSB/LC/2003(II)-77 dated 02.02.2009 was received from Assistant Director (Legal), Ministry of Home Affairs, Office of Director General, S.S.B., New Delhi stating that the matter was examined in depth with the Ministry of Law at New Delhi to discuss the matter with Central Government Counsel and to prepare a draft appeal to be filed before this Hon'ble Court. A copy of Office Order No. 49/SSB/LC/2003(II)-77, dated 02.02.2009 is filed herewith and marked as Annexure P-48.

31. That on 14.02.2009, officials from the Office of the 24<sup>th</sup> Battalion met the Central Government Counsel and discussed the matter and necessary direction were issued to prepare a list of dates and events which was accordingly prepared on 18.02.2009 and was handed over to the Central Government Counsel. Thereafter, a conference took place between the Assistant Commandant and the Central Government Counsel on 03.03.2009 and further clarifications were sought for from the authorities and certain documents were asked for. However, on 04.05.2009 a provisional seniority list of Senior Field Assistant (Vety) and Assistant Field Officer were handed over to the Central Government Counsel. Thereafter, the draft was finally prepared on 06.06.2009 which was handed over to the SSB, Gangtok for vetting by the Ministry of Law, New Delhi and again on 17.08.2009 the draft vetted by the Ministry of Law, Kolkata was received by the SSB, Gangtok, which was






finally handed over to the Central government Counsel, Sikkim on 22.8.2009. The Central government Counsel took time to prepare the final petition along with necessary documents and for obtaining signature from the concerned officer of the department and thereafter the same was accordingly filed on 14.10.'09. Therefore, petitioners have acted with due diligence and expeditiously to have the same filed challenging the order dated 20.4.'06 and 8.5.'07.

32. That the petitioner earlier had applied for a certified copy of the judgment passed by the Hon'ble Tribunal on 08.05.2007 and the copy of the same was made ready and delivered by the Registry of Hon'ble Tribunal on 9.7.'07 and modification order was delivered on 14.8.'07.

33. That as evident from above, the petitioners have filed the instant writ petition after a period of 2 years 2 month for the various reasons as stated above. The reason as set out above reflects that there has been no gross negligence or deliberate inaction on the part of the petitioners in preferring this writ petition."

**14.** We have meticulously scrutinised the explanations so put forward in those above quoted paragraphs. In our humble opinion, those paragraphs do not indicate at all any sufficient and satisfactory grounds so as to explain the inordinate delay in question. It is felt that the delay in question cannot said to be a reasonable delay.

**15.** As usual, the Government, whether Union or State, is always slow in according approval or rendering legal opinion for preferring any appeal or petition, revision or review against any judgment or order of the subordinate Courts or any quasi judicial authorities. It is seen that it is a common practice for the





Government to adopt a long long procedure in rendering legal opinion as regards filing of any cases/appeals/revisions etc. in the Court of Law.

**16.** As a result, it can be said that the Government, being the biggest litigant, has had an enormous contribution in piling up the cases in the higher Courts by giving legal advice or opinion to file unnecessary cases and that too at a belated stage.

**17.** Laches or delay has been considered to be one of the important factors which are to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. The High Court may, in an appropriate case, refuse to grant any discretionary relief by invoking their extraordinary powers if it finds that the person or authority was not vigilant of his right and there is such negligence or omission on the part of the petitioner to assert his right which causes prejudice to the opposite party.

**18.** The instant case is a glaring example of such action on the part of the Union of India. The fact situations, recorded hereinabove explaining the inordinate delay of more than 2 (two) years for filing this writ petition, would candidly reflect that this writ petition has been filed for the sake of filing the writ petition challenging the validity of the impugned order. Under such

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circumstances, it is held that this writ petition is hit by inordinate delay and laches.

**19.** Besides, having thoroughly scanned the impugned order passed by the Tribunal, on merit also and we find that no illegality, irregularity or any jurisdictional error has been committed by the Tribunal in recording the finding under challenge and there are no good or valid grounds warranting interference of this Court keeping in view the findings especially the paragraphs 10 and 11 as quoted above.

**20.** We are of the considered view that the Tribunal rightly recorded that the learned Counsel appearing for the Official Respondents fairly conceded that the seniority of the Respondent, being finalised in the year 1994 itself, was revised and placed below one T.C. Arya in the year 2003 i.e. after 9 (nine) years of publication of the original seniority list. It was also recorded by the Tribunal that the said learned Counsel appearing for the Official Respondents submitted that Respondent Department was also sympathetic to the Respondent herein and he was adjusted against a post having been diverted from Patna Range and the Official Respondents would consider to issue formal order of promotion to the applicant by creating a supernumerary post as nobody's interest would be hampered. We do fully agree with views expressed by the Tribunal as observed hereinabove.

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21. Accordingly, we do not find any merit in this writ petition to disturb the impugned order of the Tribunal.

22. The writ petition stands dismissed.

23. Having heard the learned counsel for the petitioners on imposition of costs as well as upon consideration of the facts and circumstances of the case, there shall be no order as to costs.

  
Judge.

  
Chief Justice.

rsr/jks