IN THE HIGH COURT 0F JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 25.04.2023
Pronounced on: 10.05.2023

SWP 1227/2017

Nissar Ahmad Shah …Petitioner(s)

Through: Mr. Ateeb Kanth, Advocate

Vs

Union of India and Others ...Respondent(s)

Through: Mr. T.M. Shamsi, DSGI

CORAM:
HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

J U D G M E N T

"Limitation is not a matter of justice.
It is a rule of public policy which has its origin in history and its justification in convenience."

Alfered Denning.

1. Feeling aggrieved and dissatisfied with the order passed by respondent no.3-commandant 20 Bn CRPF on 20.08.2001, the petitioner has preferred instant writ petition after an inordinate delay.

BRIEF FACTS OF THE CASE

2. It is stated that the petitioner got appointed as Constable bearing No. 983360413r in the department and was working in D/22nd Battalion, Central Reserve Police Force (CRPF) at Assam in the year 1998. In the year 2000 petitioner was granted leave for 60 days from 12.07.2000 to 09.09.2000 on account of his mother being ill. Unfortunately, he lost his mother and his wife. These harsh circumstances lead to adverse psychiatric symptoms and the petitioner had to undergo consistent treatment and had to maintain proper follow-up from the year 2001.

3. It is stated that at the back of the petitioner, the proceedings were initiated and an ex-parte dismissal order was passed by Commandant 22nd Battalion CRPF, Assam, without affording any opportunity of being heard to the petitioner. Petitioner made several representations to the Commandant and

Director General CRPF, but no heed was paid to the representations of the petitioner by the respondents. Petitioner's misfortune went unabated as his mental health started deteriorating and ultimately he was detected with psychiatric disorders including acute depression and psychological disturbance. Petitioner was admitted to Government Psychiatric Hospital on 01.02.2001 and underwent several cycles of therapies both medicinal and psychological. Petitioner finally was discharged on 10.10.2008 as per medical records.

4. Petitioner approached this Court in the year 2011 by way of SWP No. 1429/2011. It is germane to reproduce the order passed in the said writ petition on 16.12.2011 herein:

> *"Respondents' learned counsel stated at bar that petitioner's services were terminated in the year 2001. A copy of the termination order has been supplied by the learned counsel to the petitioner's learned counsel.*
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> *In view of the statement made by respondents' learned counsel, petitioner's counsel sought permission to withdraw the petition with liberty to the petitioner to question the termination order in appropriate proceedings.*
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> *Dismissed as withdrawn with liberty as prayed for subject, however, to all justice exception."*

5. Petitioner has challenged the impugned order being perverse, based on bare conjectures & surmises having been issued without application of mind. It is stated that the Inquiry officer seems to have lost sight of the basic principle of natural justice and has neglected *Audi alteram Partem.*

6. It is stated that the dismissal order speaks for itself that the proceedings were held ex-parte and petitioner had no knowledge of the disciplinary proceedings, as neither he was present in the said proceedings nor was he was given chance to cross examine any witness. Rule 27 of CRPF Rules, 1955 mandates a fair procedure which has been thrown to winds by respondents as proceedings are to be conducted in presence of accused and above all, accused is to be examined, no such opportunity has been given to the petitioner. The petitioner at the worst committed offence under Section 10(m) of CRPF Act, 1949, a less heinous offence, which warrants punishment with imprisonment for a term of one year or with fine, which may extend to three months pay, or with both, but it does not prescribe that the accused shall be terminated.

7. In the reply filed by the respondent, it is stated that petitioner was enlisted in CRPF with effect from 27.02.1998 and he reported in 22 BN, CRPF on transfer from 136 BN on 28.05.1999. He proceeded on 60 days LKD w.e.f 12.07.2000 to 09.09.2000 with permission to avail Sunday on 10.09.2000. He was due to report in the evening roll call on 10.09.2000, but he failed to do so and overstayed from LKD w.e.f 11.09.2000 (FN) without any prior permission of competent authority. He was directed to report on duty vide letter dated 18.09.2000. Based on the complaint lodged by OC D/22 BN, CRPF, WOA (warrant of arrest) addressed to Sr. SP, Anantnag Kashmir, was issued against him on 30.09.2000 for arresting and arrangement to handover him to 97 BN, CRPF which was deployed in District Anantnag, with proper Escort. Since he was overstaying from 60 days LKD w.e.f 11.09.2000 without prior permission of the competent authority, he was declared "DESERTER" from the Force, as a result of COI conducted against him vide office order no. D.II.7/2000-EC-II dated 23.01.2001. Accordingly, Memorandum of Charges, alongwith Statement of Articles of Charge, a statement of imputations of such misconduct and disobedience of order, a list of witnesses and a list of documents were sent to the petitioner at his home address through registered letter No. P.VIII.1/EC-II-22 dated-26.01.2001, which was duly registered on 30.01.2001, with a direction to submit defense or representation, if any within ten days, to the disciplinary authority otherwise disciplinary enquiry, on the charges leveled against him had to be initiated. The petitioner neither made any communication regarding the reason for his OSL nor submitted any response before the concerned authority.

8. Accordingly, as per provision contained in Rule 27 of CRPF Rules 1955 and Section 11(1) of CRPF Act, 1949, Inquiry officer was appointed on 10.03.2001. The copy of the said order was also sent to the petitioner at his home address through registered post. Since the order was not received back as undelivered, it was presumed to have been delivered by the postal authorities to the petitioner. Inquiry officer on 15.03.2001, informed the petitioner at his home address to appear before him within 10 days, from the date of issuance of letter. Again on 25.03.2001, Inquiry officer issued direction to the petitioner for his appearance but he failed to appear or to send any communication to the Inquiry officer. It is stated that the enquiry

officer was left with no option except to commence Ex-parte Departmental proceedings against the petitioner. The proceedings were completed on 07.05.2001, and a copy of all the statements of prosecution witnesses were sent to the petitioner at his home address through registered letter dated 07.05.2001. He was given further opportunity to defend his case by presenting himself personally before Inquiry officer for recording his statement with the defense documents to be produced, if any. In spite of best efforts made by the enquiry officer, giving maximum opportunity to the petitioner, either to respond to all the communications made through registered letters at his home address or to appear in person to defend his case, allowing him to avail legitimate opportunity to meet the ends of natural justice, the petitioner failed to respondent to any communication, as such, Inquiry officer drew his findings and the charge leveled against petitioner was found fully proved beyond any shadow of doubt, that he overstayed for 60 days w.e.f 11.09.2000.

9. The disciplinary authority came to the conclusion that the petitioner is not fit person to be retained in the disciplined force. A show cause notice alongwith the report of Inquiry officer was sent to the petitioner at his home address on 16.06.2001 and he was given an opportunity for making a representation within 15 days from the date of receipt of notice in accordance with the provisions contained in Rule 15 (6) of CCSL (CCA) Rules-1965, but no response was received from the petitioner. Hence, after going through the proceedings of ex-parte departmental enquiry and considering all pros and cons of the case, the disciplinary authority finally arrived at the conclusion that the petitioner is unfit to be retained in the disciplined force, as such was "Dismissed from service" vide order dated 20.08.2001.

10. It is also stated by the respondent that the unexplained delay on the part of the petitioner has not been explained, therefore, instant petition is hit by delay and latches.

11. Mr. T.M. Shamsi, learned DSGI, has referred to and relied upon judgments passed by Hon'ble Apex Court in case titled Union of India & Ors. Vs. Const. Sunil Kumar bearing Civil Appeal No. 219 of 2023 (@ SLP (C) No. 7645 of 2018, High Court of Manipur in case titled Romi Kumar Vs. Union of India throu…. bearing No. WP (C) 676 of 2022, High Court of Jammu and Kashmir in case titled Gh. Nabi Magray (Dr.) Vs. State of J&K & Anr.

bearing No. 2191/1991 and S. Bashir Ahmad (Dr.) Vs. State of J&K bearing No. SWP No. 689/1993.

12. Heard learned counsels for the parties and perused the material on record.

13. Admittedly, the powers of this Court under Article 226 of the Constitution is discretionary, its exercise must be judicious and reasonable, admits no controversy. The petitioner has stated that 60 days leave was granted in his favour from 12.07.2000 to 09.09.2000, but he has not referred anywhere the date of death of his wife and mother. Petitioner has placed on record the representation sent to commandant CRPF but the same is also without any date or receipt. Petitioner has not even averred in the petition that the representation was duly received by the respondents.

14. Mr. T.M. Shamsi, learned DSGI, has stated that as per record of the respondents, no representation has ever been received by them. The petitioner has placed on record some medical documents of 03.02.2001 i.e., after issuance of memorandum dated 26.01.2001, medical discharge slip which reflects that he was admitted in the hospital on 27.08.2008 till 10.10.2008, and a medical certificate dated 10.01.2009. Petitioner has also placed on record application for redressal of his grievances by re-appointing him in CRPF to Director General of Police, CRPF, but the same is also without any number and date. Mr. Shamsi, learned DSGI, has out rightly refuted the claim of the petitioner with respect to the said application.

15. Petitioner has placed on record the order passed by this Court in SWP no. 1429/2011, wherein the copy of termination order was supplied to the learned counsel for the petitioner and he sought permission to withdraw the petition with the liberty to question the termination order in appropriate proceedings on 16.12.2011. Even if it is presumed that the petitioner was having psychiatric issues since 2001 till 2011 after the order passed by this court, he still waited for six years till 2017 to approach this court by way of filing this petition. The memorandum of charges dated 26.01.2001 was duly received by the petitioner which substantiates that the petitioner had knowledge with respect to the disciplinary proceedings initiated against him but the petitioner chose to remain silent for about 10 years and approached this court in 2011. Moreover, the petitioner was supposed to challenge the termination order of 2001 at least after the same was provided to him by this court; the petitioner slept over the matter, remained in deep slumber's for

about six years and filed this petition on the basis of the documents without any number, date or receipt. The inference can be drawn after looking into the documents placed by the petitioner that the same are either manipulated or to be the outcome of an afterthought.

16. The doctrine of delay and latches is not to be taken so lightly when the petitioner has miserably failed to explain as to why he could not approach this Court after the termination order was furnished to him on 16.12.2011. Petitioner has nowhere explained the inordinate delay in approaching this court after about six years. The conduct of the petitioner reflects his inefficiency to be allowed to serve in a disciplined force.

17. A reference here to the judgment of the Apex Court passed in case titled "***Union of India and others Versus N Murugesan ETC."*** 2022 (2) SCC 25, would be relevant herein, wherein following has been noticed:

> *"21. The word laches is delivered from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief which causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.*
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> *22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the party of the party approaching the Court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy to a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the Court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.*
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> *23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various ground raised by the plaintiff, while an issue concerned along would be amenable to acquiescence.*
>
> *ACQUIESCENCE:*
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> *24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the*

other. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place.

25. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis."

18. Further, reference here to the judgment of the Apex Court passed in case titled "***Majji sannemma @ Sanyasirao Versus Reddy Sridevi & Ors."*** 2021 SCC ONLINE SC 1260**,** would be relevant herein, wherein following has been noticed: -

"7.3 In the case of Pundlik Jalam Patil (supra), it is observed as under:-

"The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end of litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Slamond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

7.5 In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and 'do not slumber over their rights".

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient

or a satisfactory explanation had been offered by respondent Nos. 1 & 2 herein –appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 & 2 herein – original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.

19. Further, reference to the judgment of the Apex Court passed in ***"New Delhi Municipal Council V. Pan Singh and Ors."*** (2007) 9 SCC 278 would be appropriate wherein at para 16 following has been provided: -

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference may by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and latches are relevant factors for exercise of equitable jurisdiction."

20. The Hon'ble Apex court in a judgment reported as 1995 (4) SCC 683 titled ***"State of Maharashtra Vs. Digambar,"*** has held that the relief granted by the writ court in disregard to delay in latches is an arbitrary exercise of discretion. Para 23 of the said judgment being relevant is taken note of herein:

"……Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or latches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

21. The respondents have rightly stated in the impugned order that the petitioner is not fit to be retained in the disciplined force like CRPF.

22. In view of the above and for the reasons stated, this Court is of the view that apart from merits, the writ petition suffers from delay and latches. Therefore, the writ petition is dismissed.

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR
10.05.2023
ARIF

Whether the judgment is speaking Yes/No

Whether the judgment is reportable Yes/No