

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO. 7702/2009**

% **Date of Decision : 23.03.2009**

SHRI JASWANT SINGH Petitioner

Through Mr. N.S. Dalal, Advocate

Versus

NORTH DELHI POWER LIMITED Respondent

Through Mr. Sudhir Nandrajog, Advocate

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

V. K. SHALI, J.(Oral)

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1. The petitioner in the instant writ petition has prayed for quashing the order dated 5th April, 2002 passed by Member Technical erstwhile Delhi Vidhyut Board whereby the penalty of reduction of pay by three stages with cumulative effect on the petitioner was imposed as well the order dated 20th January, 2005 passed by the Deputy General Manager (Admn.) of the respondent whereby an appeal was filed by the petitioner against the order of penalty dated 5th April, 2002 was also dismissed. The main contention of the petitioner is that the aforesaid penalty is illegal and in contravention of the law laid down by the Apex Court in

Yoginath D Bagde Vs. State of Maharashtra & Anr. AIR 1999 SC 3734.

2. It was contended that in the instant case the Enquiry Officer had exonerated the petitioner of the charges which was held against him but the disciplinary authority disagreeing with the finding of the Enquiry Officer gave a notice to the petitioner along with a disagreement note with the finding of the Enquiry Officer as well as the show cause notice as to why the punishment reduction of pay by three stages with cumulative effect for a period of three years should not be imposed on him. It was urged that this composite notice whereby the disagreement note of the disciplinary authority accompanying with the proposed punishment is given, is not sustainable in the eyes of law. The learned counsel has also placed reliance on the judgment of the learned Single Judge of this Court in the case titled W.P (C) No. 7339/1999 wherein the judgment of the Supreme Court in **Yoginath D Bagde Vs. State of Maharashtra & Anr.** AIR 1999 SC 3734 has been followed and the penalty was set aside on the question of delay and latches. It was urged by the learned counsel for the petitioner that although the penalty as imposed on 5th April, 2002 which was upheld on 20th January, 2005 but the review application of the petitioner against the said penalty in terms of the Rule 29 A of the CCS (CCA) Rules, 1965 dated February 2008 is still pending.

3. It was urged by the learned counsel for the petitioner that this Court may direct the respondent to at least dispose of the review

petition of the petitioner against the punishment so as to decide the controversy once for all.

4. Mr. Sudhir Nandrajog, learned counsel appearing on behalf of the respondent in response to the advance copy having been served has refuted the contention of the learned counsel for the petitioner it was urged by the learned counsel that the petitioner is guilty of concealment of fact in as much as against the dismissal of his appeal on 20th January, 2005, the petitioner had made a representation which was rejected vide order dated 28th August, 2005 on the ground that the case is old and there is no merit in the said representation. A photocopy of the said memo dated 22nd February, 2005 was handed over to him.

5. It was next urged by the learned counsel for the respondent that the writ petition is barred by inordinate delay and laches in as much as the appeal of the petitioner has been dismissed on 20th January, 2005 while as the order is sought to be set aside by the present writ petition which has been filed only on 23rd March, 2009 that is after a gap of almost four years. It was also contended that so far as the plea of the petitioner that at least a direction be issued to the respondent that the review application of the petitioner be disposed of is also fraught with danger on the account of the fact that the petitioner after the disposal of the said representation the petitioner will file a writ petition by urging that the cause of action has accrued to the petitioner now when a representation is purported to have been rejected.

6. I have carefully considered the submissions of the respective sides and perused the record. The legal position is now very well settled

which is to the effect that the grant of writ under Article 226 of the Constitution of India is a discretionary relief and in order to exercise the discretion in favour of the petitioner not only has to come to Court with clean hands but there should not be inordinate delay or latches. With regard to the question of delay and latches the Hon'ble Supreme Court in the case titled **State of M.P. Vs. Bhailal Bhai AIR** 1964 SC 1006 had observed as under:

“the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the Legislature as the time within which the relief by a suit in the Civil Court must be brought may ordinarily be taken to be a reasonable standard by which the delay is seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a Civil action for the remedy but where the delay is more than the period it will almost always be proper for the Court to hold that it is unreasonable”

7. Keeping in view the aforesaid legal position admittedly the appeal of the petitioner has been dismissed on 20th January, 2005 and punishment of reduction of pay by three stages with cumulative effect imposed by disciplinary authority on 5th April, 2002 has been confirmed. Taking the period from 20th January, 2005 the present appeal is having a delay of more than four years. Even if we take into consideration the representation/review petition purported to have been filed by the petitioner that has been filed only after expiry of three years from the date of disposal of the appeal. Therefore, this delay in approaching the Court for redressal of his grievance against the

impugned order is trying to rake up a stale claim which is hit by inordinate delay and latches on the part of the petitioner.

8. The contention for the learned counsel for the petitioner that at least a direction ought to be given to the respondent to dispose of the review petition purported to have been filed in February 2008. The Court feels that despite the fact that the review petition has been filed after expiry of more than three years from the date of the dismissal of the appeal but this has been done in a calculated manner so that if this review petition is dismissed then the petitioner would urge that the cause of action accrued to him is now for assailing the order of punishment dated April 2008 and the appeal rejected by order dated 20th January, 2005. The review petition itself has been filed after expiry of more than three years and the respondent have rightly not entertained the said review petition and fallen into the trap of the petitioner.

9. The learned counsel for the respondent has referred to the judgment of the Apex Court in the case titled **C. Jacob Vs. Directorate of Geology and Mining & Anr.** (2008) 10 SCC 115 wherein the Apex Court has held that the Court should be circumspect in issuing the directions to the department to consider the stale claim of a party as in such consequential direction to the department for a fresh considerations, leads to the revival of the case to be considered on merits at subsequent stages. This is precisely the intention with which the learned counsel for the petitioner is having in mind. The Court is of the view that such a direction cannot be issued in respect of a stale

claim, accordingly, this contention of the learned counsel for the petitioner does not have any merit.

10. As regards, the plea of the learned counsel for the petitioner that on merits that he has got a very good case because the respondent along with the disagreement note have simultaneously issued a show cause notice as to why the punishment of reduction of pay by three stages with cumulative effect for the period of three years should not be imposed is unsustainable in the light of the Apex Court decision cannot be accepted in the facts of the present case because the petitioner has admittedly to first cross a hurdle of delay and latches which the petitioner has failed to do so.

11. For the foregoing reasons, I am of the considered opinion that the present writ petition is hopelessly barred by inordinate delay and latches. Last but not the least the petitioner is also guilty of concealment of facts as he has not placed on record the order dated 22nd August, 2005 by virtue of his representation against his appeal is order dated 16th June, 2005 dismissed. It was expected by a party that who invokes the writ jurisdiction reveals all the facts concerning his case. Since this fact has also been concealed this also entitled the petitioner from getting a relief.

12. For the foregoing reasons mentioned above, the petition is dismissed. No order as to costs.

MARCH 23, 2009
KP

V.K. SHALI, J.