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+ **IN THE HIGH COURT OF DELHI AT NEW DELHI**
WRIT PETITION (CIVIL) NO. 6128/2010

% **Reserved on: 12th December, 2012**
Date of Decision: 18th February, 2013

J.S. CHAUHAN Petitioner
Through In person.
Versus

REGISTRAR GENERAL, DELHI HIGH COURT ...Respondent
Through Mr. Rajiv Bansal, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S. P. GARG

SANJIV KHANNA, J.

J.S. Chauhan, a retired Private Secretary of this Court, has filed this writ petition for quashing order dated 15th April, 2005, whereby he was retired from service in exercise of powers conferred by clause (j) of Rule 56 of Fundamental Rules, read with Rule 11 of the Delhi High Court Establishment (Appointments and Conditions of Service) Rules, 1975 (for short, Rules). The petitioner also impugns memo dated 27th July, 2010, rejecting his application dated 17th August, 2009. The second prayer made by the petitioner is that he should be given consequential benefits in form of salary allowances till the date of his normal superannuation i.e. 31st August, 2007. It is prayed that he is entitled to re-fixation of pension on the said basis.

2. Before we advert to the core issue i.e. the challenge to the order dated 15th April, 2005, it is appropriate to record the contentions raised by the petitioner with regard to recording of his ACRs in 1980s, his non-appointment as Private Secretary, the seniority position allotted to him vide order dated 30th November, 1981, absorption note dated 7th December, 1981, etc. and objections regarding other notes/officer order,

on various dates, including 7th May, 1984, 25th April, 1984 etc. Firstly, the challenge raised to the ACRs/appointment notes, his seniority and other ancillary issues of 1980s is not relatable with the order dated 15th April, 2005, that led to compulsory retirement of the petitioner in exercise of power under FR Rule 56(j) read with Rule 11 of the Rules. Secondly, the orders or ACRs were challenged by the petitioner in Writ Petition (Civil) No. 13997/1984, filed before the Supreme Court dismissed vide order dated 14th January, 1985 and Writ Petition No. 2761/1998, dismissed by the High court vide order dated 24th January, 2006. The petitioner contends that he had received some information pursuant to applications filed under the Right to Information Act, 2005 but this cannot be a ground to revisit the said decisions and that too at this belated stage. In any case, the issues raised before the Supreme Court and rejected cannot be made subject matter of the present petition. Therefore, we find no force in these contentions and they are liable to be disregarded and not adjudicated upon on merits.

3. The order dated 15th April, 2005, has been made subject matter of challenge in this writ petition principally on the following grounds:-

- (i) The said order was passed without order of the competent authority i.e. the Chief Justice of High Court;
- (ii) The order is perverse because it was passed without noticing that the under-performance of the petitioner was on account of medical disability;
- (iii) The order of compulsory retirement cannot be a substitute and should not be passed to foreclose departmental enquiry;
- (iv) The respondents have relied upon comments made in the annual confidential reports which were not put to the petitioner. Even otherwise, it ignores the factual position that the Earned and Casual leaves of the petitioner had lapsed;
- (v) The order including the order rejecting the representation is bad in law since no personal hearing was given to the petitioner and the orders are non-speaking.

4. The respondents have contested the petition on merits as well as for delay and laches.

5. The petitioner had entered into service of respondent on 16th March, 1972. In normal course, he would have retired on attaining the age of superannuation, i.e. 60 years, on 31st August, 2007. He was compulsorily retired vide order dated 15th April, 2005 at the age 57 years and 8 months and had completed 33 years of service upto 31st March, 2005. It is pertinent to mention here that the petitioner has filed the present writ petition on 6th September, 2010 to challenge the order dated 15th April, 2005, by which he was compulsorily retired, i.e., after a delay of over 5 years.

6. As noticed above, his normal date of retirement and superannuation was 31st August, 2007. It is, therefore, clear that the writ petition was filed 3 years after the date of his normal retirement.

7. The contention of the petitioner is that he had filed a representation dated 17th August, 2009, which was rejected on 27th July, 2010 and he has challenged this order but this does not explain the abnormal delay of 5 years in challenging his compulsory retirement. Mere representation or application does not extend or explain the belated challenge. The representation in question itself, was filed more than 4 years after the order of compulsory retirement, and is dated 17th August, 2009. The application was also filed after the date of his superannuation in normal circumstances i.e. 31st August, 2007.

8. The petitioner has, however, contended and submitted that he was unwell and, therefore, could not approach the court. The petitioner has relied upon the discharge summary issued by Indian Spinal Injury Centre. The discharge summary indicates that the petitioner was admitted to the said centre for orthopedic surgery for spine and remained

there from 26th July, 2005 to 18th August, 2005. The said discharge summary records that the petitioner had a problem about six years back when he had neck and back pain, but the problem had got aggravated for last one year due to which the petitioner had weakness in both hands and suffered from inability to write since one year or inability to button his shirt for the last six months. His inability had increased since June, 2005, after the trivial trauma. The petitioner was a case of hyper tension for the last 10 years. As per the investigation carried out, the petitioner was suffering from compressing of cord on C-5-6 of the vertebra and also left centro-lateral disc herniation at C6-7. The changes were more marked at C4-5.

9. A reading of the said discharge summary does show that the petitioner was medically unfit and was suffering from cervical myelopathy with cervical canal stenosis. There is also some merit in the contention of the petitioner that he was not aware of the said medical condition and illness or the cause thereof at the time when he was prematurely compulsorily retired. The petitioner contends that his 'poor' or 'under performance' can be attributed and explained because of the medical ailment. The aforesaid contentions we record are not without merit, but the difficulty is that the petitioner kept quiet and did not approach this court or even inform this court about his medical problem, the diagnosis and the treatment even after the operation. If the petitioner had made any representation and expressed willingness to join and to work immediately after the treatment and discharge, the matter would have required consideration and examination. The said contention would have merited greater consideration, if not grant of relief. The petitioner, however, chose to remain quiet and did not correspond or make representation pointing out true and correct facts

relating to the unknown ailment he suffered from and enclose therewith a copy of the discharge summary.

10. The petitioner has enclosed representation dated 17th July, 2006 at pages 27 and 28 of the writ petition. The said letter is not on record in the official files of the High Court. There is no proof that the said letter was delivered or received in the High Court. We are, therefore, ignoring the said letter. However, there is another letter or representation dated 17th August, 2006 on record of the writ petition (pages 29 and 30) and is available in the High Court files. This letter in paragraphs 1 and 2 states as under:-

“The applicant, who could not pursue his case earlier because of operation of his spine, craves leave to submit that a perusal of reply-applications dated 18.11.04, 14.12.04, 9.5.05 would show that he got jerk in his waist, shoulder and neck during his official duties and finally got operated in Indian Spine Injuries Centre, Vasant Kunj, New Delhi by spending more than Rs.1.5 lacs as strength in his body deteriorated up to 2/5.

However, instead of helping him in such circumstances he had been retired u/r 56(j) vide above order despite the fact that he competed for the post of Court Master (SH) in the registry of Hon’ble Supreme Court and worked there both as Private Secretary and/or Court Master to Hon’ble the Chief Justice and Hon’ble Judges of the Hon’ble Supreme Court from 1991 to 1994 with full satisfaction of their Lordships.”

11. No copy of the discharge report from the Indian Spine Injuries Centre was enclosed. The petitioner did not claim or state that because of medical reasons or illness he had “under-performed” or was not performing up to the expectations. This was not his contention or the plea raised. What was pleaded and submitted by him is mentioned in last three paragraphs of the letter, which read as under:

“Both in the Hon’ble Supreme Court and this Hon’ble Court his ACRs have been assessed as “very good” by their Lordships. He has been recorded a man of integrity and hard working. He had risen from one position

to other and discharged his responsibilities effectively and performed his functions efficiently, honestly and to the satisfaction of their Lordships with whom he was posted to work regularly. No adverse remarks had ever been communicated to him.

Above order has not been passed in public interest. It has been resorted to as a cover and/or an excuse to get rid of the honest applicant as on perusing service record of the applicant to reasonable or prudent man could have formed a bona fide opinion to remove him from service in public interest. The order is based on consideration other than service record. The applicant has never been found guilty of misconduct nor has ever been found "dead wood". The action suffers from inconsistency and lacks bona fides. CRs and ACRs of the applicant are excellent and therefore he was entitled to continue in service till date of his superannuation i.e. August 2007. Above order has not been passed on the basis of the material on service record but something else. The applicant has been chosen on selective basis in order to punish him for his honesty under the cover of compulsory/premature retirement. The power has not been exercised bona fide nor in an objective manner by considering relevant facts and applying the mind of the authority concerned. The above order did not demonstrate promotion of public interest. He has also not been paid his full GPF amount.

The applicant, therefore, humbly prays that his matter may be reconsidered, above order may be made ineffective retrospectively and he may also be intimated reasons for passing above order."

12. Thus, nearly a year after the petitioner was discharged on 18th August, 2005 from the Indian Spinal Injuries Centre, a vague representation dated 17th August, 2006 was made to the Chief Justice. The representation referred to several "other" issues contending that the order of compulsory retirement dated 15th April, 2005, was illegal, arbitrary, malafide etc. Along with the representation, the petitioner did not enclose copy of his discharge summary. The representation was considered and the petitioner was informed vide memo/letter dated 14th September, 2006, that the petitioner's request for reconsideration of the compulsory retirement had been rejected by the Acting Chief Justice. The petitioner, thereafter, remained quiet till the next representation

dated 17th August, 2009. In between the date of retirement in normal circumstances i.e. 31st August, 2007, had passed. The petitioner did not approach the court after the order dated 14th September, 2006 was communicated to him.

13. It appears and is apparent that the petitioner in August, 2006, probably had thought over the matter and he wanted to spell out and state his grievances and objections on various aspects. This was given prominence and importance. He did not propound and exposit that his medical ailment diagnosed and treated after the order of compulsory retirement, was the probable cause of his poor or below par performance. This was not the attempt or claim as along with representation dated 17th August, 2006, the petitioner did not even enclose the medical papers. Secondly, as noticed above, the said representation was made nearly one year after the petitioner had undergone medical treatment as he was discharged from the hospital on 18th August, 2005. There is no explanation for this delay.

14. Again, there is no explanation for the time gap between 14th September, 2006 and the representation which was made after nearly 3 years thereafter on 17th August, 2009 (received in the High Court on 21st August, 2009), except that the petitioner had undergone angioplasty and was hospitalized from 30th January, 2008 to 3rd February, 2008, i.e., for three days. This cannot plausibly explain the delay of three years in moving the representation. We may record that it was open to the petitioner to challenge the order dated 14th September, 2006, in case he was really aggrieved and wanted to rejoin the service after coming to know that his under-performance or low performance was on account of his medical condition caused by the disease. The petitioner, however, chose to remain silent. It is well settled that repeated representations do

not confer any right or explain the delay and laches. This was reiterated by the Supreme Court in *Karnataka Power Corpn. Ltd. v. K. Thangappan*, (2006) 4 SCC 322 observing:

“9. It was stated in *State of M.P. v. Nandlal Jaiswal* [(1986) 4 SCC 566 : AIR 1987 SC 251] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

10. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmiah Setty v. State of Mysore* [(1967) 2 SCR 70 : AIR 1967 SC 993] . This was reiterated in *Rabindranath Bose case* [(1970) 1 SCC 84 : AIR 1970 SC 470] by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. Pyarimohan Samantaray* [(1977) 3 SCC 396 : 1977 SCC (L&S) 424 : AIR 1976 SC 2617] making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See *State of Orissa v. Arun Kumar Patnaik* [(1976) 3 SCC 579 : 1976 SCC (L&S) 468 : AIR 1976 SC 1639] also.)”

15. Further, a reasonable ground should be made out for the Court to exercise the equitable jurisdiction under Article 226 of the Constitution.

It is apparent that the petitioner allowed the date of his normal retirement to pass and has belatedly filed this petition.

16. In case the petitioner had approached this court immediately after his diagnosis and treatment in August, 2005 or even after the rejection of his first representation dated 17th August, 2006 vide memo/letter dated 14th September, 2006, the prayers made might have required consideration. The petitioner has contended that delay and laches should not be a ground to throw out the petition which otherwise is meritorious. Courts undoubtedly have been liberal in exercise of equitable jurisdiction when the poor, impoverish and deprived sections approach the court for reliefs. Approaching courts may not be convenient and for many it is a matter of last resort. However, in the present case, it is noticed that the petitioner was an employee of this Court and had even worked in the Supreme Court. He had filed four writ petitions, two before the Supreme Court and two before this High Court. Writ petition (Civil) No. 2761/1998, in fact was dismissed by the Division Bench of this High Court on 24th January, 2006, after he was compulsorily retired. He was present in the court on 24th January, 2006 along with his counsel.

17. As we perceive that for some reasons, the petitioner had lost interest in continuing with the job/service. In his letter dated 27th January, 2005, written to the Registrar General of this Court, he had asked for casual leave from 31st January, 2005 to 2nd February, 2005 protesting for non-grant of casual leave to see his two maternal uncles in village whom he wanted to look after. The petitioner had gone to state as under:

“Though I fight against red-tapism & corruption and officers to save their positions leveled false allegations against me and I have not been granted opportunity of being heard before the Appointing Authority I tolerated a

lot. However, I am not in a position to tolerate humiliation of my relations at the fag end of their lives and, therefore, hereby request that I may be granted earned leave till decision of my CW No. 2761/98 and then it may be treated a notice for voluntary retirement under protest.”

18. There are earlier letters also written by the petitioner stating that typing work affects his spondalitus and nervous system and creates more stress and tension. He had requested for posting to a different post/chair with easier or less stressful work (see 2 letters received in the High Court on 13th December, 2004) and Annexure P-4 (at pages 97 and 102 of the writ petition). By another letter dated 12th January, 2005, he had expressed that because of stress, tension, ill health and personal problem, the petitioner would leave the office at 5.22 PM sharp and permission might kindly be accorded. Thus, there are good reasons to believe and accept that the petitioner had deliberately not approached the court but he had kept quiet as he did not want to challenge and question the order dated 15th April, 2005. At the same time, he was somewhat wanted to keep the issue alive by writing the letter dated 17th August, 2006. He was in double mind and undecided. This explains why he kept quiet for 3 years after he received the negative response vide memo/letter dated 14th September, 2006. This half hearted and hesitant conduct is reflective of the disinclination and reluctant approach. The petitioner, it is apparent, waited till the normal retirement date passed and belatedly has now challenged the 15th April, 2005 order.

19. The original files of the High Court were placed before us and we have examined the same. It is noticed that complaints were received regarding his unsatisfactory performance. These complaints included allegations that he was shirking work, was insubordinate and had delayed typing out judgments/orders. It was noticed that in some files (18 in numbers) orders had not been typed and/or action had not been taken. In response to one of such memos, the petitioner had refused to

attend duties till he was heard by the appointing authority. The matter was examined and keeping in view the fact that the petitioner had attained the age of 55 years, he was compulsorily retired in public interest under FR 56(j) read with Rule 11 of the Rules. The said recommendation was placed before the Chief Justice who has recorded the word 'seen' and then signed it. The contention of the petitioner that the word 'seen' does not mean approval, in the present case has to be rejected as it is rightly pointed out by the respondents that the then Hon'ble the Chief Justice used to use the word 'seen' for 'approval'. The note was put to the then Chief Justice after another Judge's examination and with his recommendation. We record, thereafter the file was processed on the question whether the petitioner should be retired with immediate effect dispensing with the requirement of 3 months' notice or in lieu of the notice period the petitioner should be paid a sum equivalent to 3 months' pay & allowances. This note was placed before the Chief Justice who approved the course of action which was followed. It is thereafter that the order dated 15th April, 2005, was issued by the Registry. The petitioner subsequently, made representation dated 21st April, 2005, which was received on 25th April, 2005. In this representation, the petitioner had protested against the order of compulsory retirement under Rule 56(j). The said representation was considered and was rejected by the Chief Justice on 4th May, 2005. Thus, it would not be correct to hold that the order of compulsory retirement did not have approval or sanction and was not passed by the competent authority i.e. the appointing authority or was passed without applying mind.

20. We do not agree that personal hearing is required to be given before rejecting petitioner's representation or the order dated 15th April, 2005. There is no such rule or mandate in law that personal hearing

should be given when a former employee makes a representation regarding compulsory retirement. Principles of natural justice do not fall in a strait jacket and cannot be applied to the factual matrix of the present case. Similarly, the order rejecting the representation in 2009 need not be reasoned. This apart delay and laches disentitles the petitioner from challenging and questioning the orders.

21. We may, however, note and record that the respondents, when they passed the order retiring the petitioner compulsorily, were not aware and conscious of the medical condition of the petitioner. It may be true and possibly the scales of justice would have tilted in favour of the petitioner, if he had approached the court after 18th August, 2005 and at least before the date of his normal retirement i.e. 31st August, 2007, but the petitioner, as we have noted, waited and belatedly approached the Court in September, 2010. In these circumstances, because of delay and laches, we do not think if any relief can be granted to the petitioner. The writ petition is accordingly dismissed. We do not order costs.

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(SANJIV KHANNA)
JUDGE

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(S. P. GARG)
JUDGE

FEBRUARY 18th, 2013
Kkb/VKR