$~13

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

Date of hearing and order: 29th April 2015

\+ W.P.(C) 2269/2015

DHARAM SINGH ..... Petitioner

Through Ms. Rashmi B. Singh, Advocate

versus

DELHI TRANSPORT CORPORATION ..... Respondent

Through Ms. Avnish Ahlawat, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S. MEHTA, J

O R D E R

%

KAILASH GAMBHIR J. (ORAL)

1. Learned counsel for the respondent at the outset, has raised a preliminary objection to the maintainability of the present Writ Petition on the ground of inordinate delay and laches on the part of the petitioner not only in approaching the Central Administrative Tribunal (for short, 'the Tribunal') to challenge the order dated 25th April, 2012 but even this Court by way of filing the present Writ Petition.

2. The submission of the counsel for the respondent is that the order of punishment was passed by the Disciplinary Authority on 28th May, 1999 and the same was upheld by the Appellate Authority by its order

dated 1st December, 1999. Thereafter, the O.A. No. 1358/2012 was preferred by the petitioner after the acquittal of the petitioner from the criminal case by order of the Judicial Magistrate, Sahaswan, Badayu, U.P. in Case No. 504/1999 dated 4th December, 2008.

3. Learned counsel for the respondent submits that limitation period under Section 21 of the Administrative Tribunals Act, 1985 is one year. But without giving any explanation, the petitioner had filed the said OA before the Tribunal after a long gap of 13 years. Counsel further submits that even though the Tribunal had not dealt with the said aspect, but the respondents can raise the legal issue even at this stage. She further submits that even for assailing the order dated 25th April, 2012 passed by the Tribunal, there is a delay of more than a period of 32 months' on the part of the petitioner and for this delay, the petitioner has not offered any explanation.

4. Learned counsel for the petitioner, on the other hand, submits that the petitioner is a poor person and therefore, some mercy should be shown to him. Counsel also submits that the objection of delay was never taken by the respondent before the Tribunal. Therefore, the respondent cannot take the said objection at this stage. Counsel also submits that the petitioner had approached the Tribunal only after he was acquitted from the criminal case being Case No. 504/1999 by the Judicial Magistrate,

Sahaswan, Badayu, U.P. and prior thereto, there was no ground available to the petitioner to challenge the order of the disciplinary authority and the appropriate authority.

5. We have heard the learned counsel for the parties.

6. The appellant was employed as a driver with the respondent/DTC. While on his duty to Route No. 3 from Delhi to Badayu on Bus No. 1946, an accident took place at Village Usmanpur around 13.30 P.M. on 6th March, 1999. The Police registered a case being FIR No. 31/1999 under Sections 279/304A IPC against the petitioner. Because of the said registration of the FIR by the Police, the petitioner was placed under suspension by the respondent vide order dated 10th March, 1999. Thereafter, the charge sheet dated 31st March, 1999 was issued against him for the said misconduct of petitioner stating inter-alia that the accident took place on 6th March, 1999 due to his rash and negligent driving.

6. Counsel for the petitioner submits that after his acquittal, the petitioner had written a letter dated 29th March, 2011 to the Deputy G.M., DTC with a request to discharge him from the punishment awarded to him. Enquiry was held against the petitioner which led to order of punishment dated 28th May, 1999 passed by the respondent/DTC. The respondent had ordered stoppage of two increments with cumulative

effect. As per the counsel for the petitioner, the said order was challenged by the appellant in an appeal and the same was dismissed by the order dated 12th October, 1999 passed by the Regional Chief Manager, DTC on the ground of being devoid of merit.

7. The order of the Disciplinary Authority and the Appellate Authority in fact became final between the parties as no further remedy was taken by the appellant to challenge the legality or the correctness of the said orders. However, the petitioner was acquitted in the criminal case by the order dated 4th December, 2008 passed by the Judicial Magistrate, Sahaswan, Badayu, U.P. After his acquittal, the petitioner had filed the representations dated 16th December, 2009, 14th September, 2010 and 29th March, 2011 to the Deputy G.M., DTC wherein he requested the authority to discharge him from the punishment. These representations, as per the counsel for the petitioner, were rejected by the respondent on 17th August, 2011. Such order dated 17th August, 2011 rejecting the representations has been placed on record by the petitioner. By a mere fact that the said date has been mentioned in the list of dates, we cannot give any credence to such an averment.

8. It is quite apparent that even after the order of acquittal being passed in favour of the petitioner herein, the petitioner remained silent and never took any steps to challenge the order of punishment before the

Tribunal.

9. So far as the representations given by the petitioner to the Deputy G.M., DTC is concerned, the settled legal position is that filing of representations cannot give the benefit of extending the period of limitation. In this regard, reliance can be placed on the judgment of the Hon'ble Supreme in the case of ***State of Tripura v. Arabinda Chakraborty, (2014) 6 SCC 460*** wherein it was held:

> *"In our opinion, the suit was hopelessly barred by law of limitation. Simply by making a representation, when there is no statutory provision or there is no statutory appeal provided, the period of limitation would not get extended. The law does not permit extension of period of limitation by mere filing of a representation. A person may go on making representations for years and in such an event the period of limitation would not commence from the date on which the last representation is decided. In the instant case, it is a fact that the respondent was given a fresh appointment order on 22.11.1967, which is on record. The said appointment order gave a fresh appointment to the respondent and therefore, there could not have been any question with regard to continuity of service with effect from the first employment of the respondent. It is pertinent to note that service of the respondent had been terminated because of his unauthorised absence. It was unfortunate that the suit had been filed after 13 years and therefore, the relevant record pertaining to the order of termination of the respondent had been destroyed or could not be traced but in such an event, no harm should be caused to the appellant-employer because the appellant-employer was not supposed to keep the record pertaining to the order terminating service of the respondent forever. Had the respondent filed the suit within the period of limitation i.e. within three years from the date when he was given a fresh appointment on 22.11.1967, possibly the Government could have placed on record an order whereby service of the respondent had been terminated. The respondent, after having additional qualification approached the concerned authority in the month of November, 1967 with a request for fresh appointment and therefore, by virtue of an order dated 22.11. 1967 he was given a fresh appointment as a librarian. In*

> *fact there was no question of losing his seniority because he was given a fresh appointment by virtue of the order dated 22.11. 1967.*
>
> ....
>
> ....
>
> *It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done."*

10. Under Section 21 of the Central Administrative Tribunals Act, 1985, the limitation period provided is one year from the date on which a final order is passed against the aggrieved person. In the facts of the present case, in fact, in so far as the Disciplinary proceedings are concerned, final order was passed by the Tribunal on 25th April, 2012 dismissing the OA of the petitioner. The said order of the Tribunal as well as the order of the disciplinary authority dated 28th May, 1999 was never challenged by the petitioner.

11. If the petitioner had any grievance or wished to challenge the

orders passed by the Disciplinary Authority as well as the Appellate Authority, it was for him to have approached the court then and not after he was acquitted from the criminal case. No such opportunity was given to the petitioner by the Appellate Authority that in case of his acquittal by the criminal court, he could re-agitate his grievance. The slackness on the part of the petitioner is much apparent as even for challenging the order of the Tribunal, there has been an inordinate and unexplained delay on the part of the petitioner as the present writ petition has been filed on 4th March, 2015. In this context, this Court deems it fit to extract few decisions which deal with delay and laches, which are as follows: In ***State of M.P., v. Nandlal Jaismal 1986 (4) SCC 566*** the Hon'ble Supreme Court held:

> *"It is well settled that the power of the High Court to issue an appropriate writ under Art. 226 of the Constitution is discretionary and the High Court in the 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 in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extra ordinary remedy under the writ jurisdiction became it is likely to cause confusion and public inconvenience and brings in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party*

> *rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. However, this rule of laches or delay is not a rigid rule which can be cast in a straight jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately, it would be a matter within the discretion of the Court. Ex-hypothesi every discretion must he exercised fairly and justly so as to promote justice and not to defeat it".*

In ***Karnataka Power Corporation Ltd. Through its Chairman & Managing Director & Anr. Vs. K.Thangappan & Anr., (2006) 4 SCC 322*** the Supreme Court had held thus:

> *"Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in* **Durga Prasad v. Chief Controller of Imports and Exports (AIR 1970 SC 769)**. *Of course, the discretion has to be exercised judicially and reasonably."*

12. Looking into the entire conduct of the petitioner, we are of the view that the present petition impugning the order dated 25th April, 2012 passed by the Tribunal in O.A No. 1358/2012 is barred on account of inordinate delay and laches on his part.

13. We find no merit in the present Writ Petition and the same is dismissed.

KAILASH GAMBHIR, J

I.S. MEHTA, J

APRIL 29, 2015
sd