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

Date of hearing and order: 27th January 2015

+ W.P.(C) 118/2015
VIRENDRA SINGH KHAIRA

..... Petitioner

Through: Mr. Girish C. Jha, Advocate

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Vivek Goyal, CGSC for
respondent No. 1.
Ms. Tanu Priya Gupta, Advocate
for respondent Nos.2 and 3.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **27.01.2015**

KAILASH GAMBHIR, J. (ORAL)

The case is taken up today as 23rd January 2015 was declared as
holiday for this Court.

C.M. Appl. No. 181/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 118/2015

1. By this petition filed under Articles 226 & 227 of the Constitution of India, petitioner seeks issuance of a writ of certiorari or any other writ or order to modify the order dated 15.2.2012 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'CAT') in O.A. No. 1860/2011. The learned counsel for the petitioner explains that the issue regarding demand of back wages alongwith interest @ 18% per annum was to be decided by the Executive Authority of the respondent and not by the learned Tribunal.

2. Mr. Girish C. Jha, the learned counsel for the petitioner vehemently contends that the learned Tribunal, while denying the back wages to the petitioner, has not spelt out any reasons for the same. He further submits that once the learned Tribunal by the impugned order dated 15.2.2012 had given complete exoneration to the petitioner from the disciplinary proceedings, directing the respondents to consider the petitioner for the promotional post of SE, after opening the sealed cover, it ought to have given a direction to the respondents to either grant all the back wages to the petitioner or to at least consider the case of the petitioner for the grant of back wages. In support of his arguments, the learned counsel for the

petitioner has placed reliance on the judgment of the Apex Court in the case of *Union of India vs. K.V. Jankiraman and others*, 1991 SCR (3) 790.

3. While explaining the delay in preferring the present petition, the counsel contended that earlier the petitioner had filed a civil suit being C.S. (OS) No.1868/2013 claiming the damages on account of loss of salary from February 2004 to August 2012 together with pendentelite and future interest @ 18% per annum, but later he realised that it was not an appropriate remedy under the law and therefore, he applied for the withdrawal of the said suit. The Learned Civil Court allowed the Petitioner to withdraw the suit vide order dated 17.01.2014

4. We have heard the submissions made by the learned counsel for the petitioner and have gone through the contents of the petition and the judgment relied upon by him.

5. In the present petition, the petitioner has challenged the order dated 15.2.2012 passed by learned Tribunal after a period of almost three years to seeking a modification of the said order. Undoubtedly, the petitioner had filed a Civil Suit vide C.S. (OS) No. 1868/2013 claiming damages and compensation to the tune of Rs. 25 Lacs on the ground that he had

been deprived of his salary from February 2004 to August 2012 because of an illegal charge sheet issued against him and of which he was even exonerated by the order passed by the learned Tribunal. The said civil suit filed by the petitioner was withdrawn by him on 17.1.2014 and it is thereafter, the petitioner had filed the present writ petition to seek modification of the impugned order dated 15.2.2012 passed by the learned Tribunal.

6. On perusal of the averments made in the present petition, we do not find even a whisper being made by the petitioner explaining the reasons for the delay and laches on his part, in preferring the present petition. In fact, in his civil suit, the petitioner had admitted that he was deprived of the salary from February 2004 to August 2012 and due to this reason he preferred to file a civil suit instead of challenging the order of the learned Tribunal. Later, under some advice or otherwise, he withdrew the civil Suit on 17.1.2014. Thereafter, the petitioner failed to take any immediate step to challenge order dated 15.2.2012 passed by the learned Tribunal for almost a year. Furthermore, the petitioner has not even given any plausible reasons for this delay. In *Durga Prashad v. Chief Controller of Imports and Exports (1969) 1 SCC 185*, it was held by the Hon'ble

Supreme Court that it is well-settled that the relief under Article 226 is discretionary, and one ground for refusing relief under Article 226 is that the petitioner has filed the petition after delay for which there is no satisfactory explanation.

7. Similarly, in ***Tridip Kumar Dingal and Ors. v. State of West Bengal and Ors.*** (2009) 1 SCC 768, the Hon'ble Supreme Court observed as under:

56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 Or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime”

8. In view of the aforesaid discussion, we are of the considered view

that the present petition filed by the petitioner cannot be entertained due to unexplained delay and laches on his part. Accordingly, the present petition preferred by the petitioner is dismissed as barred by time.

9. No costs.

KAILASH GAMBHIR, J

I.S.MEHTA, J

JANUARY 27, 2015
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