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

+ W.P.(C) 12038/2015

% *Judgment dated 23rd December, 2015*

J J LAL

..... Petitioner

Through : Mr.S.K. Das, Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through : Mr.Vikram Jethly, CGSC and Mr.Rajul
Jain, Advs. for respondents no.1 and 2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the orders dated 31.2007 passed by Central Administrative Tribunal by which the O.A. filed by the petitioner was dismissed. Challenge is also to the order dated 15.9.2008 by which the review petition filed by the petitioner was dismissed.
2. Learned counsel for respondents no.1 and 2 enters appearance on an advance copy and has raised a preliminary objection with regard to maintainability of this writ petition on the ground that the present writ petition is barred by delay and laches.
3. Learned counsel for the petitioner explains that after the passing of the order, the petitioner had in fact filed a writ petition in the Delhi High Court but the entire file got misplaced and time was spent by him in collecting the documents.
4. We have heard learned counsel for the parties and considered their rival

submissions. In para 5 of the present writ petition, the petitioner has sought to explain the grounds for delay. Para 5 of the petition reads as under:

“5. That petitioner states that he had filed earlier similar petition against the impugned order dtd. 03.01.2007 and 15.09.2008 of the Ld. Tribunal in O.A No.1044/05 and RP No.65/2007 before this Hon’ble Court vide D. No.203909 dtd. 22.12.2009. However, due to misplacement of the entire file in the office of the Advocate for the Petitioner after return of the file by the registry for curing the defects, the same could not be processed further for listing of the matter before the appropriate Bench of this Hon’ble Court.”

5. In the case of **Yunus (Bboobhai) A Hamid Padvekar v. State of Maharashtra**, reported at JT 2009 (3) SC 487, relevant portion of which reads as under:

“8. Delay or laches is one of the factors which is to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short 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.

9. What was stated in this regard by Sir Barnes Peacock in **Lindsay Petroleum Company v. Prosper Armstrong Hurde etc.** (1874) 5 PC 221 at page 239 was approved by this Court in **Moon Mills Ltd. v. Industrial Courts** (AIR 1967 SC 1450) and **Maharashtra State Transport Corporation v. Balwant Regular Motor Service** (AIR 1969 SC 329), Sir Barnes had stated:

"Now the doctrine of laches in Courts of Equity is not an

arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

*10. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation with Article 32 of the Constitution. It is apparent that what has been stated as regards that Article would apply, a fortiori, to Article 226. It was observed in **R.N Bose v. Union of India** (AIR 1970 SC 470) that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.*

6. In the case of **Brijesh Kumar & Ors. Vs. State of Haryana & Ors.,** reported at AIR 2014 SC 1612, it has been held as under:

"11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of

Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

7. Except for the explanation rendered as noticed by us in para 5 foregoing, there is no reasonable or plausible explanation rendered by the petitioner to explain the delay in filing the writ petition, when the O.A. was dismissed in the year 2007 and the review petition was dismissed in the year 2008. A duty was cast upon the petitioner to reasonably explain the delay for not approaching this Court within a reasonable period of time. The delay, in our view, is inordinate and unexplained. Resultantly, we find no grounds to entertain this petition and the same is dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 23, 2015 msr