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

+ W.P.(C) 10416/2015

% *Judgment dated 6th November, 2015*

RAJESHWAR DAYAL Petitioner

Through : Mr.Vinod Zutshi, Adv.

versus

GENERAL MANAGER, CENTRAL

WEST RAILWAY & ORS

..... Respondents

Through : Ms.Madhulika Agarwal, Adv. for Mr.J.K.
Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking a direction to quash/ set aside the order dated 30.4.2013 passed by Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*'), in O.A.No.2633/2012. The petitioner also seeks condonation of delay in filing the Original Application before the Tribunal and a direction to remand the matter back to the Tribunal, for deciding the same on merits.
2. In this case, petitioner filed an O.A. before the Tribunal along with an application seeking condonation of delay. Although the Tribunal had issued notice in the application seeking condonation of delay, the respondent had filed a detailed reply. The Tribunal has noticed that in the reply, the respondent had raised a preliminary objection with regard to the maintainability of the O.A. on the ground of delay. The petitioner has

sought to explain the delay in filing the appeal on the ground that after the order dated 14.9.2009, communicated on 15.9.2009, the petitioner submitted a Mercy Appeal to the Additional Divisional Railway Manager on 26.11.2009 and thereafter issued a reminder on 10.2.2010. Counsel for the petitioner had submitted that since the petitioner had made a representation he did not approach the Tribunal. Similar submission has been made before this Court as well.

3. We have heard learned counsel for the parties. In our view, there is no infirmity in the order passed by the Tribunal as there is no satisfactory reasoning for the delay in filing the O.A. for the reason that the representation of the petitioner was also rejected on 10.2.2010 but the petitioner did not approach the Tribunal for a period of one year and six months. We also find that there are unexplained delay and laches on the part of the petitioner in approaching this Court inasmuch as that the Tribunal dismissed the O.A. on 30.4.2013 and the petitioner has filed the present writ petition on 30.10.2015. No cogent explanation has been rendered by the petitioner for the delay in approaching this Court as well. The Tribunal while relying upon the decision rendered by Supreme Court of India in the cases of *N. Balakrishnan v. M. Krishnamurthy*, reported at (1998) SCC 123; *P.K. Ramachandran v. State of Kerala*, reported at (1997) 7 SCC 556; and *Maniben Devraj Shah v. Municipal Corporation of Briham Mumbai*, reported at (2012) 5 SCC 157, dismissed the Original Application, as the Tribunal found that the delay was not satisfactorily explained.
4. 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.

*13. In **State of Karnataka & Ors. v. S.M. Kotrayya & Ors.**, (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.*

*14. Same view has been reiterated by this Court in **Jagdish Lal & Ors. v. State of Haryana & Ors.**, AIR 1997 SC 2366, observing as under:—*

“Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios...Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

5. In view of settled law, we find no infirmity in the order passed by the Tribunal. No grounds are made out to entertain this petition, which is also barred by delay and laches. Dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 06, 2015

msr