

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP NO. 18823 OF 2016

DECIDED ON : 09.09.2016

Kuldeep Singh

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Mr. P. K. S. Phoolka, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

The petitioner was serving as a Commando and was posted on guard duty at Commando Lines, Newal, Karnal when he went on french leave. He remained absent from duty for 55 days i.e from 23.05.2007 to 17.07.2007 without information to his superior officers. On his return, he was charge sheeted for willful absence from duty for 55 days 07 hours and 15 minutes and was proceeded against departmentally for award of major punishment. His defence was that he suffered severe pain from acute kidney problem and had stones. He took treatment from a private doctor at Bathinda. The inquiry went against the petitioner and the charge of wilful absence was proven. The punishing authority, being Superintendent of Police, Commando, Haryana, awarded punishment of dismissal from service vide order dated 22.05.2008 (Annex P-3). Aggrieved by the punishment

order of dismissal, the petitioner challenged the same before the appellate authority i.e the Inspector General of Police, Railway and Technical Services, Haryana, who rejected the appeal on 13.07.2008 (Annex P-5). In the revision carried to the Director General of Police, Haryana, the petitioner remained unsuccessful. When the revision was dismissed on 13.05.2009 (Annex P-8), the petitioner sat back for many years till he has approached this Court by way of the present petition. It may be mentioned that he filed a mercy petition on 08.12.2009 to the State Government which was non-statutory remedy. He complains that this memorial was not decided and has remained pending for many years till he approached this Court for the first time in CWP No. 1481 of 2016 which was disposed of ex parte on 25.01.2016 with directions to the respondents to look into the mercy petition and pass a final order in accordance with law. The order was passed without expressing any final opinion on the merits of the case. The prayer in the petition was for a writ of mandamus to the respondents to decide his mercy petition dated 08.12.2009. The Court noticed in brief the dismissal history.

There can be no doubt that from December, 2009 till the institution of the earlier petition in early 2016 the petitioner did not seek legal recourse earlier thereto for expeditious disposal of the mercy petition, even though it was non-statutory and the State was not obliged in law to remedy the grievance. It is well settled in law that the Court can only act in aid of the vigilantes and not those who slumber over their rights for many years, or for 7 years as in this case. The mercy petition, being non-statutory, cast no legal obligation on the Home Secretary to decide the same, nor was

up a case that his appeal/petition/ memorial has remained pending and therefore, the question of delay and laches should not be held against him. When this Court passes orders without expressing opinion on merits of the case calling upon the respondents to dispose of and decide representations mercy petitions etc. that does not erase bar of limitations which may have expired long ago. The cause of action accrued to the petitioner when the last legally available remedy was exhausted, then the right to sue dies and cannot be revived by a non-actionable epistle which is no longer maintainable with period of limitation prescribed in the rules crossed and never to return. Even if a suit had been brought to challenge the order in the revision passed in the year 2008 the limitation would have expired sometime in 2011, and suit would be barred by time and therefore, the rule in State of **Madhya Pradesh v. Bhailal Bhai**, AIR 1964 SC 1006, would apply, that where limitation for filing a suit expires, it would be appropriate and prudent not to interfere in the extraordinary jurisdiction under Article 226 of the Constitution of India. The length of limitation for a suit is sufficient indicator to measure delay and laches in a writ jurisdiction. In any case, no help can be sought from the order passed by this Court in the aforesaid writ petition in view of the law laid down in authorities delivered by the Supreme Court in **Union of India v. M. K. Sarkar**, (2010) 2 SC 1126 and **C. Jacob v. Director of Geology and Mining and another**, (2009) 10 SCC 115 holding that orders should not be passed and directions issued to decide representations when the claim is stale and dead. Dead claims cannot be revived unless the right to relief is fundamental or constitutional in character as in Part III and Article 300A of the Constitution, for instance.

mercy petition which is beyond the pale of rules. If he was serious enough he should have knocked the door of the Court against the last final statutory orders and that too at least within the time frame of bringing a civil suit.

Moreover, the petitioner had put in just about five years of service before the dismissal order was passed against him for the gravest act of misconduct of desertion from guard duty and therefore, he also cannot enjoy the benefit of the argument that question of pension was not kept in mind while ordering dismissal from service of a policeman. Moreover, quantum and choice of punishment is executive function and discretion and is normally not open to be interfered with by the High Court in writ jurisdiction when power has been exercised reasonably and for sufficient cause and valid reasons. If a Commando deserts his post and is not found on guard duty and his whereabouts remain unknown and without prior information then God help the institution and the uniformed force he belonged to which department is enjoined to protect the life and liberty of citizens and his own community he once served in the police force.

With the aforesaid observations, the writ petition is found barred by limitation, delay and laches and is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

SEPTEMBER 09, 2016
shalini/Vimal

Whether speaking/reasoned ? Yes

Whether reportable ? No