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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ LPA 401/2016

RAMESH KUMAR Appellant
Through Mr.J.K. Nayyar, Advocate

versus

BANK OF INDIA Respondent
Through Mr.Rajesh Gautam, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% 10.08.2016

CM No. 25160/2016 (delay in re-filing)

For the reasons stated in the application, delay in re-filing the LPA is condoned.

Application stands disposed of.

LPA 401/2016 & CM No.24970/2016 (delay in filing)

1. The two aspects have been raised in the present appeal which is delayed by 476 days. However, before issuing notice on the application for condonation of delay in filing the Letters Patent Appeal, we deem it appropriate to examine the first aspect on merits.
2. The petitioner was charge sheeted and dismissed from service vide order dated 20th December, 2001 by the Disciplinary Authority. The appeal before the Appellate Authority was dismissed on 27th February, 2002.
3. The charge against the appellant was that he had stolen blank

demand draft leaves which were later on fraudulently encashed resulting in loss of Rs.1,00,16,000/-.

4. In our opinion, learned Single Judge has rightly held that the appellant herein cannot challenge these two orders in the writ petition which is filed in November, 2014. Delay and laches of 12/13 years is apparent and striking.

5. The learned counsel for the appellant submits that the appellant was prosecuted by Central Bureau of Investigation and was acquitted vide judgment dated 27th March, 2012. On acquittal a fresh right or cause of action had accrued.

6. The acquittal in the criminal proceedings would not furnish and give a fresh cause of action to challenge the orders dated 20.12.2001 and 27.2.2002. The disciplinary proceedings were separate and distinct from the criminal proceedings. The fact inquiry was held and on the basis of evidence, the disciplinary authority accepted that the charges stand proved. In the criminal proceedings evidence was separately led and in the said proceedings, principle of benefit of doubt was applied. The excuse that the appellant was waiting for the decision of the criminal trial to challenge the orders passed in the disciplinary proceedings is a lame and weak excuse.

7. During the course of hearing, learned counsel for the appellant submits that the appellant had made another prayer of payment of gratuity and provident fund dues. Our attention is drawn to Ground D of the writ petition wherein it is stated that the appellant had made an application under Right to Information Act and was informed that Provident Fund of Rs.1,18,987.53 was paid to him by cheque

No.028015 dated 13.07.2004 and gratuity of Rs.99,466/- was paid to him vide cheque No. 009156 dated 13.07.2004. The appellant claims that he has not received and encashed the said cheques.

8. Learned counsel appearing for the respondent/bank submits that the appellant may approach the bank with a representation qua aforesaid amounts and the contention of the appellant would be examined, notwithstanding the dismissal of writ petition and the decision of the present appeal. We take the statement on record and clarify that dismissal of the appeal and writ petition would not in any way bar the petitioner from raising the said issue.

9. With the aforesaid observation, we do not find any reason to interfere with the impugned order. Consequently, we are not issuing notice in the application seeking condonation of delay in filing and the Letters Patent Appeal is dismissed.

SANJIV KHANNA, J

SUNITA GUPTA, J

AUGUST 10, 2016/rs