

\$~16

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

+ W.P.(C) 850/2016 & C.Ms. 3764-65/2016

BHUKY NARSHIMHA NAYAK Petitioner
Through: Mr. A.S. Rao, Advocate

Versus

UNION OF INDIA & ORS. Respondents
Through: Ms. Ruchi Jain, Senior Panel
Counsel with Mr. Arvind
Sharma, Law Officer &
Mr. Sarafaraz Ahmed, Govt.
Pleader

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
04.02.2016

%

1. The present petition has been filed by the petitioner praying *inter alia* for setting aside the dismissal order dated 12th September, 2006 passed by the disciplinary authority on the ground that he had continued to remain illegally absent for period w.e.f. 14th April, 2006 till 12th September, 2006. It is pertinent to note that the remedy of statutory appeal was available to the petitioner but he had not exercised the same and did not approach the appellate authority by filing an appeal. After almost a decade, the present petition has been filed by the petitioner assailing the dismissal order dated 12th

September, 2006 without any explanation for the delay and latches.

2. It may be noted that the department had issued a Show Cause Notice dated 19th April, 2006 (*Annexure P-1*) to the petitioner calling upon him to explain as to why he did not report to duty after 14th April, 2006. The petitioner did not respond to the said Show Cause Notice. Thereafter, the impugned dismissal order was passed by the respondent on 12th September, 2006.

3. The only submission made by learned counsel for the petitioner is that his client was undergoing treatment at Warangal from 10th April, 2006 till 21st September, 2006 in terms of a medical certificate dated 2nd August, 2015 (*Annexure P-3*), issued by a private practitioner.

4. The said medical certificate (*Annexure P-3*) would not suffice or enable the petitioner to justify the failure to approach this Court within a reasonable time from the date of passing of the impugned order in January, 2011. Five years have expired since the date of passing of the said order. A lot on the aspect of inordinate delay in approaching this Court is required to be said but no material averments are made in the writ petition which could disclose an actionable cause of action. [Ref. **Malook Chand & sons & anr. Vs.**

Union of India & ors. reported as (2006) 202 CTR (Del) 440 and

W.P.(C) No. 6047/2013, entitled as **Rita Kumar Vs. Ministry of Human Resource Development and ors.**, decided on 20th April, 2015.]

5. On the aspect of inordinate delay and laches, the pertinent observations of the Apex Court in *State of Jammu & Kashmir Vs. R.K. Zalpuri & ors.* 2015 (10) SCALE 575 are as under:-

"21. In this regard reference to a passage from **Karnataka Power Corporation Ltd. Through its Chairman & Managing Director and Anr. v. K. Thangappan and Anr.** would be apposite:

*"Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers Under Article 226 of 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.**" (emphasis added)*

22. After so stating the Court after referring to the authority in **State of M.P. v. Nandalal Jaiswal** restated the principle articulated in earlier pronouncements, which is to the following effect:-

"The High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the

*acquiescent and the lethargic. **If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction.** It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.” (emphasis added)*

6. Learned counsel for the petitioner has not been able to explain the prolonged delay of ten years in approaching this Court for an appropriate relief and that too, without exhausting the remedy of filing an appeal.

7. It is also relevant to note that the present petition is accompanied by an application for seeking condonation of delay of 1872 days in re-filing the said petition. In the first place, the explanation offered to the effect that the petitioner was attending to his ailing father in his native place, is not supported by any documents. Secondly, the said explanation does not justify the

inaction on the part of the learned counsel for the petitioner to follow up the matter diligently with the Registry for several weeks.

8. Accordingly, the present petition is dismissed along with the pending applications.

HIMA KOHLI, J

SUNIL GAUR, J

FEBRUARY 04, 2016

r