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

+ **WRIT PETITION(CIVIL) NO. 8784/2016**

Date of decision: 30th September, 2016

PRONABENDRA CHAKRABORTY Petitioner

Through Mr. A.K. Ojha, Advocate.

versus

UNION OF INDIA AND ANR. Respondents

Through Ms. Aditi Sharma, Advocate for Ms.
Suparna Srivastava, Advocate for respondent Nos.
1 and 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL):

The petitioner-Pronabendra Chakraborty in this writ petition impugns the order dated 16th January, 2014 passed in the OA No. 141/2014 by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) and the order dated 29th January, 2015 passed in the RA No. 105/2014.

2. The petitioner had worked as an Attache in the Indian High Commission, Dhaka, Bangladesh from 20th May, 1999 to 12th August, 2002. On his return to India, the difference in salary in his parent department and the salary paid to him when he was working at the post of an Attache in the Indian High Commission, Dhaka, Bangladesh, to which the petitioner was entitled was accordingly paid to him. Servant allowance was not paid.

3. The petitioner retired from service on 31st January, 2010.
4. On 4th April, 2012, the petitioner made a representation seeking payment of servant allowance, which he claimed he was entitled to while he was working as an Attache in the Indian High Commission at Dhaka from 20th May, 1999 to 12th August, 2002. This was after more than two years after retirement and nearly ten years after the petitioner's return from Bangladesh. No reply was received. The petitioner also issued legal notice dated 9th May, 2013, to which again no reply was given. Thereafter, the petitioner filed the aforesaid OA No. 141/2014 along with an application for condonation of delay. This OA and the application for condonation of delay were dismissed on 16th January, 2014. Review application, as noticed above, was also dismissed vide order dated 4th March, 2014.
5. The said application for condonation of delay was primarily predicated on the Rule 134(2) of the Research and Analysis Wing (Recruitment, Cadre and Service) Rules, 1975 (1975 Rules, for short) and the position and entitlement of the petitioner, thereunder. The issue of payment of servant allowance under Rule 134(2) 1975 Rules was decided by the Tribunal in OA No. 929/2008 titled ***V.K. Jain versus Union of India & Others***. The petitioner claimed entitlement to identical or similar treatment. This judgment of the Tribunal, the petitioner submits, would be a *judgment in rem* and not *judgment in personam*. The Supreme Court in ***State of Uttar Pradesh and Others versus Arvind Kumar Srivastava and Others***,

(2015) 1 SCC 347 has observed that the normal rule is that when a particular set of employees is granted relief by the Court, then all identically situated employees should be treated equal and alike by extending that benefit, for otherwise it would amount to discrimination and would be violative of Article 14 of the Constitution.

6. We have considered the said contentions of the petitioner and regret our inability to agree with him. The claim made by the petitioner was clearly barred by limitation and, therefore, he had filed an application seeking condonation of delay. The judgment of the Tribunal dated 5th March, 2009 in **V.K. Jain's** case (supra) would not be a *judgment in rem* (See Section 41 of The Evidence Act, 1872). It was a judgment in the said case and was applicable to a particular employee, though the Tribunal had interpreted the applicable provisions. The Tribunal had not intended that this decision would apply to all similarly situated persons, including the petitioner, whose claim was already barred by limitation. V.K. Jain had challenged the decision not to pay him servant allowance, shortly after the said applicant had returned from the foreign assignment and filed the OA for payment of servant allowance. The question or plea of limitation was not decided, for the applicant therein was posted abroad till 6th May, 2005 and his representation was rejected on 26th March, 2008. Even if we accept that the decision in **V.K. Jain's** case (supra) interpreting the relevant rule would apply to other cases, the decision itself would not revive time barred claims.

7. Section 21 of the Administrative Tribunals Act, 1985 prescribes the period of limitation and in the present case the claim of the petitioner having been raised nearly ten years from the date of his return was rightly dismissed. The cause of action had arisen when the petitioner had returned to India and was not paid servant allowance. The case of *Arvind Kumar Srivastava (supra)* would not assist and rescue the petitioner for the ratio of the said case does not hold that the law of limitation does not apply. In paragraph 22.2 of *Arvind Kumar Srivastava (supra)*, it stands clarified that the principle in paragraph 22.1 is not absolute. It is subject to a well-recognised exception in the form of delay and laches. The two paragraphs read:-

"22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who

had approached the court earlier in time succeeded in their efforts, then such employees cannot claim the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim."

8. In the present case, there was a considerable delay of more than 11 years. The OA in question was filed by the petitioner in 2012, four years after the decision in *V.K. Jain (supra)*. It is pertinent to note that he petitioner's claim was barred by limitation even in 2009.

9. The petitioner has placed reliance on paragraph 9.49 of the NGO Handbook of Administrative Instructions to submit that he did not approach the court of law keeping in view the sensitivity of the assignment and nature of work. We are not inclined or impressed by the said argument for the simple reason that the petitioner had sufficient time after returning from Dhaka to approach the court or the tribunal, when he was denied payment of servant allowance. The letter dated 4th August, 2012 written by the petitioner states that on his return from special assignment to his parent department, he was paid the difference in salary of the Second Secretary and the Attache and the element of the servant allowance for the said period was not paid. This fact was known to him throughout. Pertinently, V.K. Jain had filed the original application on return to India.

10. In view of the aforesaid position, we do not find any merit in the present writ petition and the same is dismissed. There will be no order as to costs.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

SEPTEMBER 30, 2016
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