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

+ W.P.(C) 9648/2016

PRAMOD TYAGI

..... Petitioner

Through Mr.Rajtilak Guha Roy, Advocate

versus

THE COMMISSIONER OF POLICE AND ORS. Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **21.10.2016**

1. The petitioner herein had suffered punishment/removal from service vide order dated 9th August, 2006 passed under Article 311(2)(b) of Constitution of India. The reason recorded was that the petitioner had led a team of police officers in an operation which resulted in an encounter, leading to death of Najakat and Julfikar. On 31st July, 2006, a case u/s 186/353/307/34 of the Indian Penal Code and Section 27 of the Arms Act was registered at Police Station Timar Pur. The order dated 9th August, 2006 records that the petitioner, Assistant Sub Inspector in Police had not informed his supervising officer, Inspector Operations Cell/(Operations) North District before taking action on the information he received regarding the movements of the criminals/deceased.

2. The petitioner had filed an appeal against the said order which was dismissed vide order dated 5th June, 2008 passed by the Joint Commissioner of Police.

3. After waiting for about 4 and a half years, the petitioner challenged the order under Article 311(2)(b) in OA 4154/2012 filed on 5th December, 2012. The said OA was dismissed on the ground of limitation vide order dated 12th May, 2014. The present writ petition has been filed after more than two years on 3rd October, 2016 impugning the order dated 12th May, 2014 and the orders dated 9th August, 2006 and 5th June, 2008. Thus there is delay and laches in filing the present writ petition.

4. Learned counsel for the petitioner submits that other officers who were members of the raiding team and were similarly dismissed by invoking the power under Article 311(2)(b) have succeeded. Our attention is drawn to the decision dated 16th September, 2011 in WP(C) 7883/2010 titled *Govt. of NCT of Delhi & Ors. vs. Ex. Constable Sudesh Pal Rana*, affirming the order dated 5th March, 2010 passed by the Central Administrative Tribunal in OA 1689/2009 whereby the order of dismissal without inquiry under Article 311(2)(b) of the Constitution was quashed. This order passed by the High Court, however, holds that the Govt. of NCT was not precluded from taking any departmental action in accordance with the rules and regulations, if permissible in the facts and circumstances of the case. Thus, the authorities were given liberty to initiate and hold departmental proceedings as per law.

5. It is, therefore, apparent that even if we accept that the

petitioner would have similarly succeeded for the conditions to invoke the provisions of Clause (b) to Article 311(2) were not satisfied, a departmental inquiry could have been initiated. Delay in approaching the Tribunal in the OA and further delay in approaching the High Court has obviously delayed the said proceedings. Thus, it would be wrong to contend that the delay of four and a half years in approaching the Tribunal and thereafter another two years in filing the writ petition has not caused prejudice and is inconsequential. Prejudice has been caused to the respondents because of this delay. The period of limitation and the present delay in the said circumstances should not be overlooked and condoned. Delay at each stage, especially in approaching the Tribunal is substantial. In all, there has been a long delay of a period of over six years.

6. It is submitted that the petitioner was suffering from depression due to registration of the FIR and, therefore, there was a delay in filing the OA. Our attention was drawn to the Out Patient Tickets from the Deen Dayal Upadhyay Hospital. The petitioner was treated for depression disorder. These are Out Patient Tickets which do not disclose or state that the petitioner was not in a fit mental condition to approach the Tribunal and challenge the orders. The petitioner was not hospitalized. Subsequently, it appears that the petitioner had been hospitalized for cardiac treatment. The order dated 6th August, 2016 granting bail to the petitioner refers to other ailments. During the course of hearing, learned counsel for the petitioner had stated that the petitioner was in judicial custody from 2011 till 6th August, 2016.

Even if that is so, it is clear that the petitioner was not in police or judicial custody till 2011.

7. In view of the aforesaid, we do not find any merit in the writ petition and the same is dismissed.

SANJIV KHANNA, J

SUNITA GUPTA, J

OCTOBER 21, 2016

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