

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Sr. No.: 109

CWP No.17378 of 2017 (O&M)
Date of Decision: *September 13, 2017*

AVTAR SINGH

..... PETITIONER

VERSUS

UNION OF INDIA AND ANOTHER

..... RESPONDENTS

CORAM HON'BLE MR. JUSTICE JASPAL SINGH

PRESENT: Mr. Umesh Narang, Advocate,
for the petitioner(s).

. . .

Jaspal Singh, J

CM No.12635-CWP of 2017

Heard.

Application is allowed as prayed for.

Documents (Annexures P-16 & P-17) are taken on record subject to all just exceptions and be tagged at appropriate place. The filing of certified copies thereof also stands exempted.

CWP No.17378 of 2017

By virtue of instant civil writ petition, preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of certiorari, quashing the impugned orders dated October 19, 2001 (P-4) and order dated July 07, 2017 (P-14) whereby a different

interpretation has been given to Rule 12 of BSF Act and Rules AS WELL AS seeking direction to the respondents to compensate the petitioner for making him unsuitable for civil employment and seeking issuance of non-issuance of service discharge certificate.

2. At the very outset, a query was posed to learned counsel for the petitioner to the effect that as to why petitioner did not prefer any such petition claiming benefits, which have been claimed through the instant petition, at an early stage but he could not give any satisfactory reply. There is a delay of approximately more than 1½ decades in filing the petition. Thus, petitioner is guilty of long delay and laches which is suggestive of the fact that he is deemed to have acquiesced or waived off his claim or right. Such a relief cannot be claimed ignoring the long and unexplained delay.

3. In case ***Jagdish Lal v. State of Haryana, 1998(1) SCT 26 (SC): (1997) 6 SCC 538***, the Hon'ble Apex Court observed that if a person chose to sit over the matter and woke up after the decision of Court, then such person cannot stand to benefit. In that case, it was observed as follows:-

“The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Vir Pal Singh Chauhan case. The appellants’ desperate attempt to redo the seniority is not amenable to judicial review at this belated stage.”

In another case ***Union of India & others vs. C.K. Dharagupta & others, 1992(2) SCT 117 (SC) : (1997) 3 SCC 395***, it was observed as under:-

“We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi gives relief only to

Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17.-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief.”

In ***Brijesh Kumar and others vs. State of Haryana and others, 2014 (11) SCC 351***, the Hon’ble Supreme Court has laid down various principles in which law of limitation has legal maxim. While relying upon the judgment in case of ***Esha Bhattacharjee vs. Raghunathpur Nafar Academy & others, 2013(4) RCR (Civil) 785***, the Hon’ble Apex Court principles regarding delay and laches were laid down which can be summarized as under:-

“ x x x

(v) Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

x x x

(ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.”

4. A glance at the aforesaid principles makes it crystal clear that increasing tendency to perceive delay as a non-serious matter and, hence,

apathetic tendency can be exhibited in a nonchalant manner requires to be curbed.

5. Adverting to the facts of the case in hand, petitioner stood retired on May 31, 2000 as Ex. Assistant Commandant from 58 Bn. B.S.F., Jaisalmer (Rajasthan) on attaining the age of superannuation. In terms of Section 12 B.S.F. Act 1968, service discharge book and recommendations for civil employment for the B.S.F. Personnel was not issued to the petitioner at the time of his retirement only identity card bearing no.363 was issued. The discharge book and recommendations for civil employment are necessary documents for getting employment by the B.S.F. Personnel after his retirement. The petitioner has sought the aforesaid discharge service book and recommendations for civil employment through the instant petition in the year 2017 i.e. after more than 1½ decades. In view of the legal position discussed above, on the basis of various authoritative pronouncements of the Hon'ble Apex Court, it can be safely observed that instant petition suffers from delay and laches.

6. In the light of what has been discussed above, this Court does not find any merit in the instant petition. Instant petition stands dismissed.

September 13, 2017

Avin/Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**