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

+ **WP(C) 3227/2015**

Date of decision: 29th August, 2017

FATEH SINGH

..... Petitioner

Through: Mr.Ankur Chhibber, Mr.R.R.Mishra,
Ms.Shruti Sharma, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Barkha Babbar, Ms.Dipanjali
Tyagi, Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

The petitioner, Fateh Singh, in this writ petition filed in March, 2015, has primarily prayed for quashing and setting aside of the order dated 5th November, 2002 by which his service was terminated on the ground of colour blindness. The petitioner has also prayed for reinstatement with back wages and that the period

from 5th November, 2002 till reinstatement should be counted as period spent on duty for the purpose of retirement benefits.

2. The first and apparent question which arises for consideration is whether the writ petition should be dismissed on the ground of delay and laches. In fact, the principle of *res judicata* would firmly apply.

3. Learned counsel for the petitioner submits that delay and laches would not matter in view of subsequent developments and orders in different writ petitions. In particular, our attention was drawn to the order dated 22nd September, 2014 passed by the respondents on the representation of the petitioner pursuant to the statement made by the counsel for the petitioner before the Supreme Court on 14th January, 2013 in Special Leave Petition (C) no.39971/2012 and the order dated 9th July, 2014 passed in WP (C) no.2866/2013, which refers to the statement made by the counsel for the respondents on instructions, that the authorities would pass a fresh order in light of the orders passed by the Supreme Court and law laid down by the judgments of this Court including judgment in

WP(C) no.5077/2008 *Sudesh Kumar vs. Union of India & Anr.*
decided on 22nd March, 2011.

4. Having considered the submissions, we are not inclined to entertain and consider the prayers in the present writ petition on the ground of delay, laches and *res judicata*. We will elaborate and give our reasons.

5. The petitioner had joined as Head Constable (Driver) on 4th August, 1998.

6. The petitioner was retired from service on medical grounds of 'total colour blindness (Protanopia)', on 5th November, 2002.

7. The petitioner had challenged the retirement order dated 5th November, 2002 in WP(C) no.1557/2003, which was dismissed on 29th May, 2008 recording that in view of exemption notification, provisions of Disability (Equal Opportunities) Protection of Rights and Full Participation Act, 1995 were not applicable to combatant personnel.

8. The petitioner, thereafter, kept quiet for almost five years.

9. After about five years, the petitioner filed WP(C) no. 6603/2012 before the Delhi High Court. This writ petition was dismissed by a speaking order dated 17th October, 2012 on the ground of delay and laches and also constructive *res judicata*. This order dated 17th October, 2012, was passed after the decision dated 22nd March, 2011, in WP(C) No.5077/2008 ***Sudesh Kumar & Ors.*** (supra). In ***Sudesh Kumar & Ors.*** (supra) officers in the combatant Force had challenged their de-boarding on the ground of colour blindness. In these cases, issue of delay and laches was not an aspect considered and decided, as the challenge was not belated and delayed.

10. The petitioner had then preferred Special Leave to Appeal (C) no.39971/2012, which was dismissed as withdrawn. This order of dismissal, however, records statement on behalf of the petitioner that he intended to make a representation to the Central Government for his rehabilitation in accordance with the decision in ***Sudesh Kumar*** (supra) decided by the Delhi High Court on 22nd March, 2011.

11. We do not read and consider the said order or statement made by the counsel for the petitioner as giving a fresh or new cause of action. If that was so, the order of the Supreme Court would have been differently worded and the special leave petition would not have been dismissed as withdrawn.

12. The petitioner thereafter made a representation which was rejected vide order dated 5th April, 2013. This order is a brief one and merely records that the representation cannot be entertained at the belated stage.

13. The petitioner had filed a WP(C) 2866/2013 in which as noticed above, an order of remand was passed on the basis of the statement made by the learned counsel of the respondents.

14. The aforesaid orders and fact sheet would only reveal that the petitioner, harping on the statement made by his counsel before the Supreme Court on 14th January, 2013, had made a representation. This would not be a concession or an undertaking given by the respondents.

15. Recording the statement, that the petitioner would make a representation, would not furnish a ground and reason for the petitioner to file and have a second round of litigation on merits and unsettle the earlier order dated 17th October, 2012 in WP (C) No. 6603/2012. Prayer for reinstatement and quashing of the order dated 5th November, 2002 according to us, had attained finality, when WP (C) No. 6603/2012 was dismissed on the ground of delay and laches and constructive *res judicata*. The petitioner cannot overcome the said dismissal, which has obtained finality without the order dated 17th October, 2012 being set aside and quashed.

16. The writ petition should not be entertained on the aforesaid grounds as barred and hit by principles of *res judicata*, in addition to delay and laches. The writ petition is accordingly dismissed. No order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 29, 2017
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