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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23rd May, 2018

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W.P.(C) 1312/2018

INSPECTOR JASWANT SINGH

.....Petitioner

Through: Dr. S.D. Dutta and Mr. Angad Kotwal,
Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Manish Mohan, CGSC with
Mr. Mohit Bhardwaj and Ms. Manisha
Saroja, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (Oral)

C.M. No. 5453/18 (delay)

1. For the reasons stated in the application, the present application is allowed. Application stands disposed of.

W.P.(C) 1312/2018

1. The petitioner vide this present Writ petition has prayed for quashing of order dated 09.02.2004 passed by the General Security Force Court (hereinafter referred as 'GSFC') as well as the annulment of the GSFC proceedings. He further sought for declaration of Rule 129 of the Border Security Force (hereinafter referred as 'BSF') Rules, 1969 as unconstitutional and for restoration of the original status of the petitioner as was prior to the

order dated 09.02.2004 along with the damages of Rs. Twenty five lakhs.

2. The Brief facts of the present case are that on 15.02.2000, the petitioner along with the others, who was deployed at Counter Insurgency(CI) as sub-inspector at Post Lanzang being 'F' Coy, at 0730 hours left for patrolling in District Manipur for Road Opening Party (ROP) Duty. After travelling for about 60 to 70 yards from the ROP, the petitioner brought down his arm and put the change lever at 'A' or 'R', cocked the weapon and changed the lever position to 'S' and moved ahead. As he moved a few yards ahead, he lost his balance and fumbled due to which two rounds of 9 mm ammunition got fired accidentally from his personal weapon i.e. 9mm Carbine Machine, butt No. 68, body No. RR 9275. One of the bullets hit the Constable(Ct.) Girish Chand, who was about 10-15 yards away from him, on his right hip and injured him. A Court of Inquiry(COI) was constituted which conducted its proceedings to ascertain the circumstances leading to the accidental firing from the petitioner's weapon. As per the petitioner, the COI had opined that no charges should be framed against the petitioner as the incident occurred by mistake and he should be relieved from such charges a warning that the same should not to be repeated again. The recording of evidence was concluded on 08.12.2002 and thereafter, on 23.12.2003 a charge sheet was prepared by the Commandant, 64 Bn BSF, against him to be tried before the GSFC. In the year 2003, The General Security Force Court(GSFC) was

convened which charged him and vide its order dated 09.02.2014 sentenced him with the following punishments:

- a) To take rank and precedence as if his rank and appointment as Sub-Inspector bore the date 2nd November, 2001 and not 2nd day of November, 1998.
 - b) To forfeit three years past service for the purpose of pension.
 - c) To be severely reprimanded.
3. The Statutory petition under the Section 117 of BSF Act read with the provision of Rule 167 of BSF Rules was made by the petitioner before the Inspector General BSF on 10.02.2004, against the verdict of the GSFC. The Inspector General, thereafter, vide its order dated 24.04.2004 confirmed the order passed by the GSFC. The petitioner thereafter on 28.07.2004 made the submission of post confirmation petition under Section 117 read with Rule 167-169 of BSF Rules addressed to the Director General, BSF and then, a mercy petition was also filed by him on 17.07.2008 before the Director General, BSF seeking review of the earlier orders passed but both the aforesaid petitions were of no avail to him. He had also filed a service writ petition in J&K High Court in the year 2013 but his petition was rejected on the ground of territorial jurisdiction. An appeal was filed against the order of the Single Judge but that too was rejected.
4. After the dismissal of the LPA No. 82/2017, the petitioner has filed the present Writ petition and has challenged the impugned order dated 09.02.2004 on several grounds. The petitioner, *inter alia*, places reliance on the proceedings of the Board of Officers/Court

of Inquiry to contend that the charge sheet against him was not made out. It has been vehemently urged that there was no evidence to support the findings of the culpability of the petitioner and the orders have been passed without the application of mind.

5. The main grounds of contention as raised by the petitioner herein are that there is non-compliance of Rule 45-B of the BSF Rules, 1969 due to which the recording of evidence under Rule 48 of BSF Rules is perverse; that the copy of the Trial proceedings before the GSFC were not provided for preparing the statutory petition under Section 117(1) of BSF Rules, 1969; that perusal of the evidence shows that the weapon through which the said accident occurred was recommended to be for 'R-2' repair which meant major repair was required in the weapon and there is a possibility of fire-arm to be defective; that the two cartridges as well as the clothes worn by the victim were never brought on record before the concerned authority; that neither the inspection was conducted by the ballistics experts nor any reports were filed in this regard; that the said incident was merely in the nature of 'accident' under Section 80 of the Indian Penal Code, 1860 and that the finding of the GSFC is against the law and is liable to be set aside.
6. Per Contra, Mr. Mohan, learned counsel for the respondents, who entered appearance relies upon the judgments of the Supreme Court titled *Kumar Kaul & Ors. vs. Union of India* reported in (2012) 7 SCC 610 as also *Shiba Shankar Mohapatra & Ors.* reported in (2010) 12 SCC 471 while opposing the issuance of notice in this matter on the ground of delay and laches.

7. We have heard the counsel for the parties and perused the material on record.
8. On perusal of the factual exposition, it is quite vivid that the petitioner was sentenced by the General Security Force Court on 09.02.2004 which was confirmed by Inspector General vide order dated 24.04.2004. The pre-confirmation petition before the Inspector General was rejected on 29.02.2004. He, thereafter, on 28.07.2004 made the submission of post confirmation petition under Section 117 read with Rule 167-169 of BSF Rules before the Director General, BSF and then, a mercy petition as alleged by him was filed on 17.07.2008 before the Director General, BSF, seeking review of the earlier orders to which he contends that he has not received any reply till date. In the affidavit filed by him, he has categorically stated that he was posted to J&K to frontier HQ BSF Kashmir DIG G team in May, 2008. Thereafter, he was posted in Gujarat in 2010 to 53 Bn BSF. He was posted back to J&K in February, 2011 to 68 Bn BSF at Samba and then to SHQ BSF Polora camp, Jammu, on his own request made to Shri M Tripathi DIG(Personnel). We find that there is no explanation for the delay in seeking legal remedy between the year 2004 to 2013, when the Writ petition No. 1932/2013, filed in the J & K High Court was dismissed on 01.03.2017 and LPASW No. 82/2017 was dismissed on 11.08.2017.
9. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. Be

that as it may, we shall proceed to deal with the repercussions of delay and laches, as we are of the considered opinion that the same deserves to be addressed to in the present case.

Reliance have been placed in the case of ***Banda Development Authority, Banda vs. Moti Lal Agarwal and Ors*** reported in **(2011) 5 SCC 394**, wherein it was held as under:

*“16. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the Petitioner on merits. In *State of Madhya Pradesh v. Bhailal Bhai* AIR 1964 SC 1006, the Constitution Bench considered the effect of delay in filing writ petition under Article 226 of the Constitution and held:...It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it...It is not easy nor is it desirable to lay down any Rule for universal application. It may however be stated as a general Rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.... Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears*

to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.”

In the case of **State of Jammu and Kashmir vs. R.K. Zalpuri and Ors.** reported in (2015) 15 SCC 602, wherein it was held 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.(2006) 4 SCC 322 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. After so stating the Court after referring to the authority in State of M.P. v. Nandalal Jaiswal (1986) 4 SCC 566 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.

22. *In State of Maharashtra v. Digambar (1995) 4 SCC 683 a three-judge bench laid down that: 19. Power of the High Court to be exercised Under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court Under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon un-blameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.*

23. *Recently in Chennai Metropolitan Water Supply and Sewerage Board and Ors. v. T.T. Murali Babu (2014) 4 SCC 108, it has been ruled thus: Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal*

obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant--a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of writ court to exercise the discretion. In Tukaram Kana Joshi and Ors. v. Maharashtra Industrial Development Corporation & Ors. (2013) 1 SCC 353 it has been ruled that: Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience."

10. After rummaging through the entire facts and circumstances of the present case and the settled proposition of law, it is seen that there is no inviolable rule of law that whenever there is a delay, the court

must necessarily refuse to entertain the petition. It is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. In the facts of the present case, we have repeatedly requested the learned counsel for the petitioner to satisfy the court with regard to the delay in filing the present writ petition although he did approach the J&K High court in the year 2013, the writ petition was dismissed in the year 2017 on the ground of territorial jurisdiction. It is observed from the entire chain of events from the point of occurrence that, after the petitioner was sentenced in the year 2004, it was only in 2008 that he got posted to J&K. There is no explanation as to why between 2006-2013, the petitioner did not take any steps to agitate his grievance. The perusal of the affidavit filed by the petitioner also shows that he was posted in Gujarat in the year 2010 and it was only on his own request made to Shri M Tripathi DIG(Personnel) that he was posted back to J&K in February, 2013. The explanation provided in the affidavit filed by the petitioner as for the delay caused in filing the present Writ petition is non-convincing and highly belated. The unexplained delay on part of the petitioner need less to emphasise and fails to justify adjudication.

11. For the reasons stated herein, in the absence of delay having been satisfactorily explained, we are unable to entertain this petition. This court finds no reason to allow the present petition and the

same is dismissed on the ground of delay and laches. Ordered accordingly.

SANGITA DHINGRA SEHGAL, J.

G.S.SISTANI, J

MAY 23, 2018
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