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

+ W.P.(C) 11970/2019

DR. KRASHNENDRA SINGH Petitioner
Through Mr. Shreenath A. Khemak, Advocate.

Versus

UNION OF INDIA & ORS Respondents
Through Mr. Pratyush Mighlani, Sr. Panel
Counsel and Mr. Sameer Sinha, GP.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **13.02.2020**

W.P.(C) 11970/2019 & C.M. No.5836/2020 (by the appellant under Section 151 CPC for placing on record additional affidavit)

1. Pursuant to the order dated 11.12.2019, the petitioner has filed an affidavit to explain the delay in approaching the court for relief in circumstances, where an actionable cause of action had accrued in his favour to assail his three ACRs for the years 2005-06, 2006-07 and 2007-07 on 09.05.2011, the date on which his representation against the below benchmark grading awarded to him on 28.7.2010, was rejected by the respondents.

2. In the additional affidavit filed by the petitioner, he has sought to explain that he remained posted in difficult and sensitive assignments from May, 2012 onwards, which impeded his ability to approach the court for

W.P.(C) 11970/2019

Page 1 of 4

relief. As for the period between May, 2011 to May, 2012, learned counsel for the petitioner states that the DPC had rejected the petitioner's fitness for grant of NFU on 1.8.2011 and he had filed a representation in this regard on 14.11.2011, which was returned unactioned by the respondents on 29.11.2012.

3. Learned counsel for the petitioner further states that since the petitioner was posted in Shillong, he had to work in extreme cold climate and suffered several ailments for which he was undergoing treatment between January, 2012 to July, 2013.

4. At this stage, learned counsel for the respondent disputes the above submission and states on instructions that the petitioner has been declared medically in Shape-I from the year 2011 to 2017-18. In support of the said submission, he hands over a document issued by the Director General, Border Roads relating to the medical condition of the petitioner, which is taken on record. In view of the said document, we are not in a position to accept the submission made by learned counsel for the petitioner that the petitioner was suffering from several ailments and therefore, could not seek legal recourse.

5. As for the period between February, 2014 to August, 2014, learned counsel for the petitioner states that petitioner was posted at Jammu, where he was busy attending to his son's coaching and entrance examination. We may note that prior thereto, the petitioner had availed a long leave on the ground that he wanted to re-locate his family at Noida, where he owned a flat. When the petitioner was admittedly staying in Nodia between August

to October, 2013, there was all the occasion for him to have sought legal recourse.

6. Between September to October, 2016, the petitioner claims that he was posted in Leh Ladakh and was therefore, not in a position to travel to Delhi. The other submission made in the additional affidavit is that as a Commander posted at Imphal, Manipur during November, 2016 to July, 2019, the petitioner had several responsibilities to discharge, due to which he could not approach the court for seeking relief on time.

7. We have perused the averments made in the additional affidavit and are of the opinion that there is nothing on record to persuade this court to condone a delay of 8 years, reckoned from 09.05.2011, the date on which his representation against down gradation of his three ACRs, which had taken place on 28.7.2010, was rejected.

8. Reliance sought to be placed by learned counsel for the petitioner on the judgment dated 11.12.2019 of a Coordinate Bench in W.P. (C) Nos.3585/2019 and 6087/2019, to urge that the court did not non suit the petitioners therein on the grounds of delay and, instead had entertained the writ petitions on merits, cannot be of any assistance to the petitioner for the simple reason that in the captioned cases, the petitioners therein had approached the court well in time against their down gradation of the ACRs by filing a writ petition in the year 2013. The said writ petitions were disposed of by the Division Bench with directions issued to the petitioners therein to submit representation to the respondents and on their representations being rejected, they had initiated a second round of litigation well in time. The petitioner herein has not taken any such steps so far.

Instead, he has remained silent for all this while and approached the court after the expiry of eight years without a reasonable explanation for the delay.

9. In the given facts and circumstances of the case, we decline to entertain the present petition which is dismissed on the ground of delay and *laches*.

HIMA KOHLI, J

ASHA MENON, J

FEBRUARY 13, 202`0

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