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

+ **W.P. (C) 2766/2021, CM APPL. 8319/2021**

SHIV NARAYAN BALAIPetitioner

Through: Ms. Ankita Patnaik, Advocate.

Versus

UNION OF INDIA AND ORSRespondents

Through: Mr. Satyendra Kumar, Advocate.

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Date of Decision: 02st March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging primarily the ACRs of the Petitioner for the period 1999-2000 and 2001-2002 as well as order dated 30th October, 2000 issued by Respondent No. 4 and order dated 30th May, 2002 issued by Respondent No. 3 communicating the adverse entries in the Petitioner's ACR. Petitioner also challenges the order dated 18th May, 2020 passed by Respondent No. 1, order dated 04th September, 2013 passed by Respondent No. 2 and all other orders whereby the representations, appeals and memorials submitted by the Petitioner, against the adverse entries in the impugned ACRs, were rejected.

3. Learned counsel for the Petitioner states that the Petitioner is a member of CRPF. She states that even though the Petitioner was undergoing treatment in Delhi, yet the Respondents issued a transfer order whereby the Petitioner was posted to Srinagar. She also states that another officer was posted to Delhi from Mathura using caste connections with the IG Police, to take the Petitioner's place.

4. She states that vide impugned order dated 30th October, 2000, the Petitioner was communicated about the adverse entries in the Petitioner's impugned ACR for the period 1999-2000. She further points out that vide impugned order dated 30th May 2002, the Adverse entries in the Petitioner's ACR for the period 2001-2002, were also communicated to the Petitioner.

5. She contends that since the Petitioner was dissatisfied with the rejection of the appeal and representation against adverse remarks in the ACR, the Petitioner preferred memorials dated 09/09/2005 and 23/09/2006 to the President of India requesting for expunction of adverse remarks recorded in the Petitioner's ACR. She points out that both these memorials were rejected vide impugned order dated 04th September, 2013.

6. She further states that the Petitioner's detailed representation dated 05th December, 2017 to the National Commission for Scheduled Castes was rejected by the Ministry of Home Affairs vide impugned order dated 18th May, 2020.

7. A perusal of the paper book reveals that the Adverse entry in the ACR for the period 1999-2000 stated that though the Petitioner was a disciplined officer, yet during the year 1999, his behaviour and performance was not up to the mark and that due to his personal reasons he had refused to be deployed in Srinagar and that he should improve.

8. Further, vide Order dated 18th September, 2001 respondent communicated adverse entries in the subsequent ACR for the period 2000-2001 stating that while the Petitioner was in SHAPE-1 medical category, he was not attending PT/parade on medical grounds but on the other hand was playing tennis.

9. The adverse entry communicated vide letter dated 30th May, 2002 stated that the Petitioner was lackadaisical in giving direction and guidance on completion of administrative works and careless in responsibility, zeal and hard work and adopted an adamant attitude. It also stated that the petitioner was aloof and was in the habit of making unnecessary direct correspondence with higher officers and lacked officer like qualities, therefore he needed to introspect and improve relations with other officers.

10. It is not understood as to how the petitioner approached the National Commission for Scheduled Castes for expunction of adverse entries and for improvement of ACR, as it has been repeatedly held that National Commission for Scheduled Castes has no jurisdiction with regard to upgradation of ACR's. One of us (Manmohan, J) in ***Union of India v. National Commission for Scheduled Castes, 2014 SCC OnLine Del 3324*** has held that the National Commission for Scheduled Castes is not an adjudicatory body which can issue binding directions or injunction orders and further that Commission's Reports are not an alternative to the hierarchical judicial system envisaged under the Constitution of India.

11. This court is further of the view that the correctness of APAR gradings cannot be ascertained after a lapse of nineteen to twenty years as in the present writ petition, the petitioner primarily challenges the ACR gradings for the period 1999-2000 and 2001-2002.

12. This Court is of the opinion that the present writ petition is barred by delay and laches. In fact, the Supreme Court in ***Chairman/Managing Director, U.P. Power Corporation Ltd. & Ors. vs. Ram Gopal, 2020 SCC OnLine SC 101*** has held that delay defeats equity and law favours the vigilant and not the indolent. The relevant portion of the said judgment is reproduced hereinbelow:-

“16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fencesitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In SS Balu v. State of Kerala, this Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”

17. Similarly, in Vijay Kumar Kaul v. Union of India this Court while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, this Court observed that:

“27. ...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in

favour of one melts into total insignificance and paves the path of extinction with the passage of time.”

13. It has also been repeatedly held by the Supreme Court that repeated representations by the petitioner would not extend the time period to file the writ petition.

14. Accordingly, the present writ petition along with pending application is dismissed on account of delay and laches.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

MARCH 2, 2021
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