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

+ **W.P.(C) 4294/2021**

CIVIL AUDIT ASSOCIATION, CATEGORY-I (SR. AUDIT OFFICERS AND AUDIT OFFICERS) & ORS. Petitioners

Through: **Ms. Haripriya Padmanabhan, Adv.**

Versus

**COMPTROLLER AND AUDITOR GENERAL OF INDIA & ORS.
..... Respondents**

Through: **Mr. Gaurang Kanth and Ms. Biji Rajesh, Advs. for respondents.
Mr. Dev P. Bharadwaj, Mr. Anubha Bhardwaj and Mr. Jatin Teotia, Advs. for R-4/UOI.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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07.04.2021

CM No. 13055/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. The petition impugns the order dated 5th January, 2021, of Central Administrative Tribunal (CAT), Principal Bench, New Delhi, of dismissal of M.A. No. 570/2020 for condonation of 773 days delay in filing of O.A. No. 29/2021.

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4. The counsel for the respondents appears on advance notice and has been heard.

5. The O.A. aforesaid was preferred, impugning the order dated 13th June, 2011 qua pay fixation. The counsel for the petitioners states that besides the said order, certain other orders/communications of the year 2011 were also impugned. CAT, vide the impugned order, has dismissed M.A. No. 570/2020 and consequently dismissed the O.A.

6. Since CAT, in the impugned order has recorded that the order dated 13th June, 2011 impugned before it was of pay fixation and gave rise to a recurring cause of action, we have enquired from the counsel for the petitioners, the need for filing the application for condonation of delay; Supreme Court, in ***Union of India Vs. Tarsem Singh*** (2008) 8 SCC 648 has held:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the

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claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

7. The counsel for the petitioner states that as per the practice prevalent in CAT, the Registry of CAT does not even entertain the O.A. if in its opinion, is belated, unless accompanied with an application for condonation of delay.

8. CAT, conscious of the aforesaid position in law, in the impugned order, has refused to condone the delay on the ground that though the individual officers were entitled to apply but not the Association.

9. However, besides the Association, two individuals also joined as applicants to the O.A. and CAT, while giving the said reasoning, has ignored the said fact.

10. Moreover, Supreme Court in ***State of Karnataka Vs. C. Lalitha*** (2006) 2 SCC 747 and ***State of Uttar Pradesh Vs. Arvind Kumar Srivastava*** (2015) 1 SCC 347 has held that service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly; only because one person has approached the Court that would not mean that persons similarly situated should be treated differently; justice demands that a person should not be allowed to derive any undue advantage over other employees; the normal rule is that when a particular set

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of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit; not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India; this principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated equally; this principle is subject to well recognised exceptions in the form of delays/laches/acquiescence; persons who did not challenge wrongful action in their case and woke up after long delay, such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them and delays/laches/acquiescence would be a valid ground to dismiss their claim.

11. We have thus enquired from the counsel for the respondents, why an association of all those similarly placed could not have claimed the relief, obviating time and energy of each and every government servant being spent in litigation rather than in performing the public duties for which they are employed.

12. The counsel for the petitioners states that *M.R. Gupta Vs. Union of India* (1995) 5 SCC 628 also does not make out any difference between an Association and individual officer/employee.

13. We are of the view that CAT should consider all the said aspects and proceed to decide the O.A. on merits. It will be open to CAT, while so deciding and if allowing the O.A., to restrict the benefit granted of increments in pay/emoluments to such date as may be deemed appropriate.

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14. Accordingly, the impugned order is set aside and the O.A. 29/2021 is restored before CAT, Principal Bench, New Delhi, for decision on merits.

15. The aforesaid O.A. be listed before CAT for consideration on 21st May, 2021.

16. The respondents, if desire to file a response to the O.A., may file the same before the said date.

17. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

APRIL 7, 2021
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