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

Date of Decision: 15th December, 2021

+ **W.P.(C) 14358/2021**

14611025 ACFN ONKARESHWAR TRIPATHI Petitioner

Through: Mr.Pawan Prakash Pathak,
Adv.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr.P.S. Singh, Sr. Panel
Counsel for UOI with
Mr.Kavindra Gill, (GP)

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. Present writ petition has been filed challenging the order dated 21st April 2015 passed by Armed Force Tribunal, Principal Bench as well as the order of dismissal from service dated 13th December, 2000 in summary court martial proceeding. Petitioner also seeks directions to the respondents to reduce quantum of punishment.

2. Learned counsel for the petitioner states that the petitioner was enrolled in the Indian Army in year 1988 and was posted in 43 EME (Electrical & Mechanical Engineering Corps) Bn. in Jammu & Kashmir. He further states petitioner availed leave from 04th August 1999 to 28th September 1999, during which period the petitioner had

met with an accident, due to which he was admitted in hospital and therefore, could not establish communication with the battalion.

3. He admits that the petitioner remained absent for 419 Days and reported back on 20th November 2000 voluntarily to EME Depot Battalion, Secundarabad. He states that the petitioner was informed about the impugned order dated 21st April, 2015 by his Advocate only in the year 2020.

4. Having heard the learned counsel for the petitioner, this Court finds that no document has been filed to show that the petitioner met with an accident in 1999 and that she was hospitalized after the alleged accident. Consequently, this Court has no option but to presume that the petitioner was absent for 419 days without any just cause and reason.

5. Further, the present writ petition is barred by delay and laches inasmuch as though the impugned order is dated 21st April, 2015, yet the present writ petition has been filed after a lapse of more than six years. The alibi that the petitioner learnt about the impugned order only in the year 2020 is make belief as no proceedings or complaint has been filed against the advocate of the petitioner who had appeared before the Armed Forces Tribunal.

6. The Supreme Court in the case of ***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.” (emphasis supplied)

17. Similarly, in Vijay Kumar Kaul v. Union of India³ 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.”

7. Accordingly, the present writ petition, is dismissed both on merits as well as on the ground of laches.

MANMOHAN, J

NAVIN CHAWLA, J

DECEMBER 15, 2021/rv