

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.793 of 2023

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Nand Kishor Singh Son of Prabhunath Singh Resident of Village-Hakam,
Police Station-Mahmmadpur, District-Gopalganj.

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Indian Railway, Railway Board,
New Delhi-110001.
2. The General Manager N.F. Railway, Maligaon, Guwahati 781011.
3. The Chief Personnel Officer N.F. Railway, Maligaon, Guwahati- 781011.
4. The ASC/KIR, N.F. Railway, Katihar-844102
5. The IPF/KIR (W) N.F. Railway, Katihar-844102

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Tiwary, Advocate
For the Respondent/s : Mr.Rakesh Kumar Sinha, CGC

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

5 28-06-2023 1. The writ petition has been filed for following
relief:

"(I) For issuance of an appropriate writ (s)/ direction (s) for quashing the inquiry report dated 16.02.2000 conducted by the respondent no.5 against the petitioner as well as suspension order dated 15.02.2000 of the petitioner and restore his service and to pay the arrears of his salary and other and also for commanding the respondents to accept the application of the petitioner dated 31.10.1999 for his voluntarily retirement and also for grant of all other consequential reliefs/benefits for which the petitioner is found entitled to. The



respondent authority has not passed any punishment order after submission of the inquiry report for which the petitioner has been awaiting for more than 22 years."

2. From the pleadings in the writ petition, it is apparent that the petitioner, while working as a Constable, had proceeded to avail three days leave from 25.04.1999 till 29.04.1999. He was supposed to report back on 30.04.1999, but has remained absent since then. A charge-memo dated 20.10.1999 was drawn up which he refused to accept. While recording his refusal to accept the charge-memo, the petitioner had inscribed as follows:

*"हमको अब घरेलू मामलों के कारण बची हुई
शेष नौकरी नहीं करना है इसीलिए आपका आदेश नहीं लिया।"*

3. On subsequent intimations sent in November, 1999, he again refused to accept the same and returned it by inscribing as follows:

*"मैं नंदकिशोर सिंह आपका DAR इन्क्वायरी में
अपने पारिवारिक कारण उपस्थित होने में असमर्थ हूँ, क्योंकि
बची हुई नौकरी नहीं करना है। DSC/KIR को मैं भूलेन्टियर
रिटायरमेंट के लिए आवेदन दे चुका हूँ दिनांक 31.10.99 को
ASI श्री K.N. चौबे के द्वारा S/D नंदकिशोर सिंह
31.10.99 ग्रा.हकाम, जिला-गोपालगंज"*

4. He had abstained from the proceedings, which



fact is not in dispute from averments made in the writ petition.

5. An enquiry report, thus, came to be submitted on 16.02.2000, holding the petitioner guilty of the charge of his unauthorized absence. By the time the enquiry report was submitted, the petitioner had already continued to be unauthorizedly absent for nearly ten months .

6. The findings of the enquiry officer dated 16.02.2000, for the first time, was challenged by the petitioner in CWJC No. 4626 of 2021, nearly 20 years later. On submission of the petitioner's counsel that he would be approaching the Central Administrative Tribunal (CAT), the writ petition was dismissed with liberty to avail the remedy in accordance with law.

7. The petitioner, thereafter, approached the CAT, Patna Bench vide OA No. 050/00781/2022 which was dismissed for want of jurisdiction on 13.10.2022 as the petitioner's services were pertaining to an armed force of the Union. The petitioner is, thus, before this Court again by way of the instant (second) writ proceedings.

8. The enquiry report dated 16.02.2000 was assailed by petitioner, for the first time, after 20 years in CWJC No. 4626 of 2021 which was withdrawn. The petitioner



thereafter had approached the CAT in 2022. His OA was dismissed for want of jurisdiction.

9. The fact that the petitioner has moved this Court earlier in CWJC No. 4626 of 2021, is not a relevant fact for considering issue of delay and laches. The issue of limitation on delay and laches is required to be considered with reference to the original cause of action. In this case, being the charge memo dated 20/10/1999, which the petitioner explicitly refused to respond to. He has inscribed his refusal on the notices containing the charge memo and, in fact, gone to the extent of saying that he is not interested with continuing in service. The notices, with respect to the charge memo, on which the petitioner has inscribed his refusal, are also of the year 1999.

10. Perusal of the order passed in the petitioner's earlier writ proceedings in CWJC No. 4626 of 2021, shows that having filed the same, the petitioner did not press the application on merits. In fact, he only expresses his intention to approach the appropriate Forum i.e., Central Administrative Tribunal (CAT). The writ petition was, thus, accordingly, dismissed with liberty to the petitioner. He, thereafter, approached the CAT. On 13/10/2022, the CAT dismissed the O.A. for want of jurisdiction. Neither this Court in the earlier



proceedings, nor the CAT in OA No. 050/00781/2022 (Annexure 3) has gone into the merits of the petitioner's claim. The order of this Court in CWJC No. 4626 of 2021 and the order passed by the CAT, Patna, in OA No. 050/00781/2022, in the above noted facts and circumstances, viewed keeping in background the law declared by the Apex Court in the case of *Union of India and Ors. vs. C. Girija and Ors.* reported in *(2019) 15 SCC 633*, would not give rise to a fresh cause of action. The cause of action, for the purposes of delay and latches, would be the issuance of charge memo and notices to the petitioner, noted above, in the year 1999 itself, the petitioner's claim had become stale at the time he approached this Court in CWJC No. 4626 of 2021. Filing of the OA in the opinion of this Court, will thus not give any fresh cause of action. The Court, in this connection, would consider it apposite to take note of certain paragraphs of decision of the Apex Court in the case of *Union of India and Ors.. vs. C. Girija and Ors.* (supra) Paragraph Nos. 16 to 20, which are relevant for the present purposes, are, thus, being reproduced:

"16. This Court had occasion to consider the question of cause of action in reference to grievances pertaining to service matters. This Court in C. Jacob v. Director of



Geology and Mining had occasion to consider the case where an employee was terminated and after decades, he filed a representation, which was decided. After decision of the representation, he filed an OA in the Tribunal, which was entertained and order was passed. In the above context, in para 9, following has been held : (SCC pp. 122-23)

“9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any “decision” on rights and obligations of parties. Little do they realise the consequences of such a direction to “consider”. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to “consider”. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The



tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”

17. This Court again in Union of India v. M.K. Sarkar on belated representation laid down following, which is extracted below : (SCC p. 66, para 15)

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”.....

.....20. On the proposition as noticed above, it is clear that the claim of the



applicant for inclusion of her name in the panel, which was issued on 9-1-2001 and for the first time was raked up by her, by filing representation on 25-9-2007 i.e. after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27-12-2007, a stale claim shall not become a live claim. Both the Tribunal and the High Court did not advert to this important aspect of the matter. It is further to be noted from the material on record that after declaration of panel on 9-1-2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With regard to her non-inclusion in panel in 2005 selection, she also filed OA No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27-9-2007 with regard to selection made in 2001, the delay and laches shall not be wiped out.”

11. The writ application, therefore, suffers from



delay and latches and must fail on this score only.

12. The writ petition stands dismissed.

(Madhuresh Prasad, J)

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