



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 04, 2023

+ W.P.(C) 1854/2019

LAL BIHARI SINGH YADAV & ANR Petitioner
Through: Ms. Ankita Patnaik, Adv.

versus

UNION OF INDIA & ANR Respondents
Through: Mr. Kirtiman Singh, CGSC with
Mr. Waize Ali Noor and Mr. Madhav
Bajaj, Adv.

AND

+ W.P.(C) 12237/2019

RAM PRAKASH Petitioner
Through: Ms. Ankita Patnaik, Adv.

versus

UNION OF INDIA & ANR Respondents
Through: Ms. Bharathi Raju, Sr. Panel Counsel
for UOI

AND

+ W.P.(C) 3283/2019

BALRAJ SINGH JASWAL AND ORS. Petitioners
Through: Ms. Ankita Patnaik, Adv.

versus

UNION OF INDIA & ANR Respondents
Through: Mr. Nidhi Raman, CGSC with
Mr. Zubin Singh and Mr. Debarchan
De, Adv. for R-1 & 2/UOI



CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. By this order, I shall decide the above three writ petitions challenging the orders of the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short). W.P.(C) 1854/2019 & W.P.(C) 12237/2019, entails a challenge to the order dated July 5, 2018 in Original Application No.1984/2017 ('OA', for short). Suffice to state, the petitioners in these two writ petitions were the applicants in said OA.

2. The writ petition being W.P.(C) 3283/2019 has been filed by 11 petitioners challenging the order of the Tribunal dated December 28, 2018 passed in OA 3738/2016.

3. The issue which fell for consideration in the two OAs was identical, inasmuch as whether the petitioners are entitled to the benefit of revised pay-scale for the post of Director and Deputy Director as recommended by the 5th Central Pay Commission ('5th CPC', for short), w.e.f. January 01, 1996, with consequential benefits.

4. It may be stated here that the Tribunal has in part allowed both the OAs and directed that the petitioners are entitled to be extended the benefit of revised pay-scale of the posts of Director and Deputy Director as recommended by the 5th Central Pay Commission. However, the benefit of revised pay-scale was extended to the



petitioners only w.e.f the date of passing of the order by the Tribunal inasmuch as they shall not be entitled to any arrears for the earlier period.

5. Concedingly, respondents have not challenged the order of the Tribunal. The respondents have extended the benefit of the revised pay-scale of ₹14,300-18,300 (for the post Director) and ₹12,000 – 16,500 (for the post of Deputy Director) vide letter dated September 14, 2018, in view of the order passed by the Tribunal in OA 1984/2017 and OA 3738/2016.

6. The issue which falls for consideration of this Court is in a very narrow compass that is, whether the petitioners are entitled to the arrears of salary pursuant to the grant of benefit of revised pay-scales w.e.f January 1, 1996.

7. The petitioners are working in the Directorate of Lighthouse and Lightships under the Ministry of Shipping and Transport, Govt. of India. At the relevant time, they were holding the post of Director and Deputy Director, respectively.

8. One Ratender Kumar Bhanti, ('Bhanti', in short) who was also working as Director / Deputy-Director at the relevant point of time approached the Central Administrative Tribunal, Ahmedabad Bench, for the benefit of revised pay-scale w.e.f January 1, 1996, vide OA 481/2002 & OA 425/2005, respectively. The OA 481/2002, was decided by the Tribunal, Ahmedabad Bench by directing the following:

“34. We are accordingly of the view that the order dated 19.11.2001 is bad for non-consideration of the issues referred to in paras above and the same is set aside. We further direct the Secretary of the Administrative Ministry



in consultation with Department of Finance and Department of decision in the matter, preferably within three months from the date of receipt of the order. With the above direction the OA stands disposed off. No costs.”

9. Pursuant thereto an order dated April 19, 2005 was passed whereby the claim of the Bhanti was rejected. Bhanti filed OA 425/2005, where by the Tribunal has set aside the order dated April 19, 2005 and directed the respondents to re-consider the issue in consultation with the Department of Personnel & Department of Expenditure within three months of the receipt of the order and communicate a speaking order to the applicant. Respondents once again passed a speaking order dated June 14, 2007 declining the request of Bhanti.

10. Bhanti's third round of litigation being OA 304/2007, was accepted by the Tribunal on March 06, 2009 holding the service of Bhanti and Anr. as Organised Service and granted the aforesaid pay-scale(s) with interest @ 9% per annum. The relevant paragraphs are reproduced as under:

“41. We are accordingly of the view that the case falls in the category referred to in sub-para (f) of para 29 and that there is hostile discrimination. The ratio of decision in Mizoram Engineering Service Association will also apply. We should have normally directed reconsideration. However, the matter had already been remanded on two occasions earlier. We are accordingly in the facts-and circumstances of this case of the view that we should substitute the decision of the Executive in the interest of justice.

42. The OA is allowed. The applicant will be entitled to arrears with 9% interest. In case the amount with arrears is not paid within 6 months interest at 10% will be payable on



the arrears and interest so computed from the expiry of said period to the date of actual payment. The terminal benefits shall be recomputed and differences paid within 6 months. Interest at 9% will be payable beyond this period to the date of actual payment. The OA is disposed off accordingly. No costs.”

11. The respondents challenged the order dated March 6, 2009 passed by the Tribunal in OA before the High Court of Gujarat in Special Civil Application No.1628/2010. The writ petition was dismissed by the High Court vide judgment dated July 23, 2015. The judgment attained finality and was implemented by the respondents.

12. Similarly, in the case of **Deepak Kumar Sinha v. Union of India & Ors., in OA 61/2011**, the Tribunal in view of the order passed in **R.K. Bhanti (supra)** has granted the same benefits to the applicant, therein by holding as under:

“2. In view of above, the matter was examined in detail in this Ministry and it has been decided to grant and allow the relief sought by Sh. D.K. Sinha, DDG, DOLI as directed by Hon'ble CAT, Ahmedabad vide its judgment dated 22.11.2016 in the above O.A. &MA at par with that granted to Sh. R.K. Bhanti by this Ministry vide its letter No.C-18018/18/2015-5L dated 17th May, 2016 (copy enclosed) and with effect from the date relief was granted to Sh. R.K. Bhanti.”

13. In another matter being **K.K. Braroo and Ors., v UOI & Anr in OA 2509/2016**, decided on May 28, 2019, K.K. Braroo and others applicants approached the Central Administrative Tribunal, Principal Bench in the year 2016 seeking the same benefit as was in the case of **R.K. Bhanti (supra)**. The said OA was decided in favour of the applicants therein, whereby the Tribunal has followed the judgment in Bhanti's case and granted identical relief to K.K. Braroo and other



similarly placed persons. The relevant paragraphs are reproduced as under:

“14. The record clearly discloses that the applicants stand on the same footing as does Shri R.K. Bhanti, be it in the context of the post held by them or pay scales. There is no justification on the part of the respondents to deny such benefit to the applicants herein, particularly, when they were asked to wait till the case of Shri R.K. Bhanti is decided finally.

15. Therefore, we allow the OA and direct the respondents to extend the benefit of revised pay scale to the applicants, as was done in the case of Shri R.K. Bhanti, within three months, from the date of receipt of a certified copy of this order. Pending MAs, if any, stand disposed of. There shall be no order as to costs.”

14. The case of the petitioners herein is that they had sought similar benefit as has been granted to Bhanti and Ors. in their OA. The said OA was allowed by the Tribunal but arrears of pay have been denied. The conclusion of the Tribunal in the OA filed by the petitioners is reproduced as under:

OA 1984/2017

“9. The relief granted to Mr. Bhanti was not personal to him. It was an adjudication with reference to the recommendations of the 5th CPC, and extendibility of the same to the posts of Director and Deputy Director. Once Mr. Bhanti was extended the benefit of revised pay scales, in all fairness, the respondents ought to have extended it to all the other persons holding the same post?. The distinction sought to be maintained in the order impugned is indeed, one without any difference. Added to that, the two cases which were cited to deny the benefit to the applicants, ended up in adjudication against the department. In a way, it can be said that there was a bit of non-application of mind which led to the passing of the impugned order. This much, however, can be said that the



applicants were not that prompt in pursuing their remedies. Though some times the laches may lead to denial of relief in its entirety, we are of the view that the applicants can be denied the benefit of arrears of the revised pay scales, even while granting the revised pay scales.

10. We, therefore, allow this OA; and direct that the applicants are entitled to be extended the benefit of revised pay scales for the post of Director and Deputy Director, as recommended by the Fifth Central Pay Commission. However, the benefit of revised pay scales shall be extended to the applicants only with effect from the date of passing of this order, and they shall not be entitled to be paid any arrears for the earlier period. There shall be no order as to costs.

OA 3738/2016

2. During the pendency of this O.A., the respondents have passed order dated 14.09.2018 extending the benefit of pay scale for the posts of Director and Deputy Director. The arrears were denied to the applicants therein. The result is that the applicants herein got the same relief as those in O.A. No.1984/2017. Since we denied the arrears to the applicants in the said O.A., we direct that the applicants herein also are also not entitled for arrears. The submission of the learned counsel for the petitioners is there is no reason why similar benefits should have been extended by the Tribunal in their favour as well."

15. Ms. Patnaik, seeks similar benefit by stating that, denying the benefit as granted to Bhanti, Braroo and D. K. Sinha is arbitrary. She submits no reasoning has been given by the Tribunal while denying the benefit for the past period.

16. On the other hand, Ms. Bharathi Raju, Sr. Panel Counsel for Union of India and Mr. Kirtiman Singh, learned CGSC appearing for the respondents makes two-fold submissions; (i) the impugned order of the Tribunal is just and valid as it *ex-facie* apparent that the petitioners herein have approached the Department for the grievances only after a



lapse of 7 years and therefore the Tribunal had rightly said that the arrears from the date of the impugned judgment and not from the date of the promotion as sought by the petitioners; (ii) that the Courts time and again cautioned that the Doctrine of Delay and Laches cannot be lightly brushed while exercising an extraordinary and equitable jurisdiction since delay comes in the way of equity and brings in hazard and cause injury to the litigation. In support of their submission, they have relied upon the following judgments and seeks, the dismissal of the writ petitions.

- (a) *State of U.P. v. Arvind Kumar Srivastava, (2015) 1 SCC 347;*
- (b) *Prakash Singh v. Union of India, 2016 SCC OnLine Del 3632;*
- (c) *Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108;*
- (d) *Chairman / Managing Director, Uttar Pradesh Power Corporation Limited & Ors. v. Ram Gopal, (2021) 13 SCC 225;*
- (e) *M/s. Rup Diamonds v. Union of India, (1989) 2 SCC 356;*
- (f) *S.M.A Ram v. The Director, Indian Institute of Technology & Ors. in W.P No.6970 of 2016, before the Madras High Court decided on 04.08.2023; and*
- (g) *Union of India & Ors. v. Tarsem Singh 2008 (8) SCC 648.*

17. Having heard the learned counsel for the parties and perused the record, the short issue which arises for consideration is whether the Tribunal is justified in not granting the arrears of salary pursuant to the



directions given by it to grant the pay-scales to the petitioners from the date on the passing of the order by it thereby denying arrears for the earlier period.

18. The submission of Mr. Singh primarily is that the petitioners made representation and approached the Tribunal in the year 2016-2017, as such, after a period of almost 20 years (1996–2016), the petitioners are not entitled to the relief.

19. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of *Arvind Kumar Srivastava (supra)*, more specifically paragraphs 18 and 22.2, to contend that the Supreme Court has held that the persons who did not challenge the wrongful action in their cases and acquiesced into the same as against their counterparts who had approached the Court earlier in time succeeded in their efforts, such employee cannot claim the benefit of the judgment to render in their favour as well.

20. The said judgment was in the facts wherein a challenge was made to a selection process that took place in the year 1986, appointment orders were issued used in the year 1987, which were cancelled on June 22, 1987. The respondent therein did not challenge the cancellation order till 1996, i.e., for a period of 9 years. The Supreme Court held that 27 years have passed after the issuance of the cancellation order. So, not only, there is unexplained delay and laches in filing the claim petition after a period of 9 years, it would be totally unjust to direct the appellants to give appointments to the respondent after 27 years when most of the respondents are beyond the age of 50 years.



21. He has also relied upon the judgment in the case of **Prakash Singh (supra)** wherein a Co-ordinate Bench of this Court has also relied upon the judgment in the case of **Arvind Kumar Srivastava (supra)**, more specifically paragraphs 15, 19 and 21, wherein this Court has held as under:

“15. Recently, the Supreme Court in State of Uttar Pradesh v. Arvind Kumar Srivastava, (2015) 1 SCC 347 after examining a catena of decisions on the question whether similarly situated government employees should be granted the benefit of an order passed by a Court in another case, had examined the issue in the context of discrimination and equal treatment under Article 14 of the Constitution. Reference was made to the principles of delay and laches. In the said context, an issue also arose as to whether the government, being an ideal employer, in fairness, should grant similar relief to others similarly situated. Elucidating on the aforesaid aspect, it was held as under: -

“22.1. The normal rule is that when a particular set 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 similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the



benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

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19. Reference can be made to the decision of the Supreme Court in Union of India v. Tarsem Singh, (2008) 8 SCC 648 wherein the Supreme Court had examined the question of limitation and continuous cause of action, to observe : -

“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 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.

(emphasis supplied)

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21. The earlier adjudications, which have become final, between the same parties, would be binding on the said parties or their representatives-in-interest by applying the principle of res judicata or constructive res judicata. Similarly, an unchallenged or unquestioned earlier decision or positions adopted would continue to be binding on the parties concerned, if the concerned party has not challenged and questioned the said decision or position by way of a writ or appeal or by taking recourse to an appropriate judicial remedy, where the law of limitation or principles of delay and laches, as the case may be, would come in the way and prevent the party concerned from enforcing the claim in a judicial forum or Court of law. Law of limitation or delay and laches, does not affect the rights of parties as per the declaration of law, but bars and prevents a party from enforcing the said right by taking recourse to judicial or quasi-judicial proceedings. The law may be in favour of a party, but the party could be barred from enforcing the said right or claim because the period of limitation as prescribed, prevents and



bars the party from such enforcement. When the principle of delay and laches applies, the court refuses to exercise discretion and jurisdiction. Behind the law of limitation and the principle of delay and laches, lies the important and salutary public policy principle that stale and old issues should not be reopened and made subject matter of litigation. Issues, which were never agitated and were allowed to rest cannot be raked up at any point of time. Thus, fence sitters who let the time pass, lose their right to enforce their claim.”

22. Suffice to state that, this Court was concerned with an issue of seniority inasmuch as the petitioner was appointed as Senior Administrative Officer (‘SAO’, for short) Grade-II in the Department of Defence Research and Development Organisation (‘DRDO’, for short) on April 30, 2004. His seniority viz. promotee officers was fixed with reference to his date of joining as SAO, Grade-II in the seniority list published on June 1, 2004. The petitioner did not object to the seniority as fixed predicated on his date of joining. In 2007, those senior to the petitioner as per the seniority list dated June 1, 2004 were promoted to the post of SAO, Grade-I. On September 19, 2013, the petitioner made a representation for correction of his seniority and claimed consequential relief by way of promotion to SAO, Grade-I w.e.f January 1, 2007 relying upon the judgment of the Supreme Court in the case of **Union of India v. N.R. Parmar, (2012) 13 SCC 340**, on which the petitioner was informed that the issue of seniority and promotion has been referred to the DoP&T for their advice, which is awaited.

23. The petitioner filed an Original Application being OA 570/2014 which was disposed of on February 17, 2014 with a direction



to the respondents to dispose of the petitioner's representation dated March 19, 2013, by considering the judgment in the case of *N.R. Parmar (supra)*. The said representation was disposed of by the respondent on April 29, 2014, whereby it was stated that it has been decided not to re-open the seniority case of the petitioner which was already settled in the year 2004. This Court has by relying and referring to various judgments in the case of *Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536*; *Tarsem Singh (supra)*; *Arvind Kumar Srivastava (supra)* and *Union of India v. M.K. Sarkar, (2010) 2 SCC 59*, held that the decision on representation related to time-barred claim of seniority/promotion etc. would not constitute a fresh and new cause of action or revive a time barred and stale claim, and as such rejected the writ petition.

24. Similarly, in so far as the judgment in the case of *T.T. Murali Babu (supra)*, is concerned the issue was related to departmental proceedings initiated against the respondent in which the impugned order of punishment of dismissal was passed on April 16, 1998. A writ petition was preferred by the respondent against the said order and the learned Single Judge vide order dated March 12, 2003 directed reconsideration solely on the ground that the Managing Director who was the Disciplinary Authority had taken part in the proceedings of the Board which decided the appeal. Pursuant thereto the matter was again placed before the Board which affirmed the order of the Disciplinary Authority and consequently dismissed the appeal on July 1, 2003. The respondent filed a writ petition on July 7, 2007 against re-affirmation of the order of the dismissal. The learned Single Judge held, even if the



employee had absented from duty there was no past misconduct of desertion / absence. Therefore, the punishment of dismissal from service for the first time was too harsh and disproportionate and deserves to be interfered with. The Division Bench affirmed the order of the learned Single Judge.

25. Two issues which arose before the Supreme Court are (i) when the charge of unauthorized absence for a long period has been proved, was it justified on the part of the High Court to take resort to the doctrine of proportionality and direct reinstatement of the respondent in service and (ii) whether the respondent could invoke the extraordinary jurisdiction of the High Court after four years. Allowing the appeal, the Supreme Court has in paragraphs 13, 16 and 17, has held as under:

“13. First, we shall deal with the facet of delay. In Maharashtra SRTC v. Balwant Regular Motor Service [AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Hurd [Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221] , which is as follows : (Balwant Regular Motor Service case [AIR 1969 SC 329] , AIR pp. 335-36, para 11)

“11. ... ‘Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in, either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles



substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.’ (Lindsay Petroleum Co. case [Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221] , PC pp. 239-40)”

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16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously



oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons — who compete with “Kumbhakarna” or for that matter “Rip Van Winkle”. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

26. In so far as the judgment in the case of **Ram Gopal (supra)** is concerned, the Supreme Court was concerned with a selection held for Class-IV positions of Junior Meter Tester and Repairer, Mate and Meter Coolie / Chaukidar of which result was declared on August 31, 1978. The respondent emerged as one of the successful candidates for being appointed as a Meter Coolie / Chaukidar. Owing to subsequent discovery of certain irregularities in the selection process, UPPCL cancelled selection on November 3, 1978 and consequently terminated the services of all the appointees on November 7, 1978.

27. One Shyam Bihari Lal another successful candidate, whose services were also terminated, approached the High Court which allowed the writ petition on October 26, 1989 observing that no reasons had been assigned for the termination. An intra-court Appeal filed by the UPPCL was dismissed. The UPPCL approached the Supreme Court by way of **Civil Appeal No. 7123 of 1993** in **U.P.SEB v. Shyam Bihari Lal**. The appeal was allowed vide order dated November 22, 1993 with an observation that the reason for termination was “writ large” on the order itself, namely, “*cancellation of result of selection of*



operating staff” and the matter was accordingly remitted to the High Court for disposal on merits. Thereafter the Division Bench of the High Court considered the Shyam Bihari Lal’s case and held that though the writ petition was liable to be dismissed on merits, however considering the peculiar circumstances, wherein the Shyam Bihari Lal had already served UPPCL for 17 years rendering him jobless might be too harsh a consequence.

28. The respondent/Ram Gopal filed a petition being W.P.(C) 7897/1990 before the High Court impugning the order November 17, 1998. The Learned Single Judge of the Allahabad High Court summarily allowed the respondent’s writ petition on April 5, 2007 on the premise that the matter was squarely covered by the decision of the High Court dated October 26, 1989 in Shyam Lal Bihari’s case. An Intra-Court Appeal was dismissed by the Division Bench vide order dated April 29, 2016. The Supreme Court allowed the appeal by stating in paragraph 11 of the judgment that though the limitation do not strictly apply to proceedings under Article 32 or 226 of the Constitution, 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 the writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed irregularities to fester.

29. Insofar as the judgment in the case of *M/s. Rup Diamonds & Ors. (supra)* is concerned, reliance has been placed on paragraph 8 of the judgment wherein the Supreme Court has held as under:



“8. Apart altogether from the merits of the grounds for rejection — on which it cannot be said that the mere rejection of the special leave petitions in the cases of M/s Ripal Kumar & Co., and M/s H. Patel & Co., could, by itself, be construed as the imprimatur of this Court on the correctness of the decisions sought to be appealed against — there is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring this writ petition which is brought after almost an year after the first rejection. From the orders in Ripal Kumar & Co. case and H. Patel & Co. case it is seen that in the former case the application for revalidation and endorsement was made on 12-3-1984 within four months of the date of the Redemption Certificate dated 16-11-1983 and in the latter case the application for revalidation was filed on 20-6-1984 in about three months from the Redemption Certificate dated 9-3-1984.”

(Emphasis supplied)

30. Suffice to state the Supreme Court was concerned with a decision of the Joint Chief Controller of Imports and Exports of the year 1986 declining to re-validate and endorse six Import Licenses for import of Open General License items upon the fulfillment by the petitioners of their export obligations under the Import Licenses in the year 1982-83. The Supreme Court dismissed the petition on the ground of delay and laches.

31. In *S.M.A. Ram (supra)*, the High Court of Madras was concerned with facts wherein the writ petitioner had joined the services of the IIT Madras as helper in the year 1971. Thereafter, he was



employed as a delivery boy. His services were regularized on April 1, 1979. He was assigned the duty of distribution of milk in the Central Supply Unit within IIT Madras Campus and in 1995 his designation was changed to Distribution Attendant. The petitioner was transferred to Tapti Hostel Office on October 15, 1998 without any change in his designation. The petitioner and 11 other persons wrote a letter to the General Secretary, Indian Institute of Technology Hostel Employees Association setting out the difficulties faced by them and requested them to take action, especially to specify the nature of work expected from them. He was again transferred from Tapti office to Central Supplies Unit. There was further modification of the order and he was assigned the duty of distribution of milk in the morning and evening to the hostels, maintaining accounts, preparation of fortnightly bills. While he was discharging his duties, he was issued an order on December 29, 1999 transferring him from Central Supplies Unit to Godavari Mess. It was his case that the 2nd respondent with *malafide* intention and ulterior motive complained of dereliction of duty by the petitioner to which a detailed reply was given denying the allegations. It appears that disciplinary proceedings were initiated against the petitioner whereby he was imposed a penalty of bringing down the pay-scale by one step. The appellate authority did not consider the appeals dated August 12, 2004, September 27, 2004 and November 2, 2004 and pass the orders. The order of penalty / punishment was acted upon proposing the penalty on July 10, 2004. On October 28, 2012, the petitioner approached the Chairman of the Grievance Committee and it is thereafter the petitioner approached the learned Single Judge.



32. It was also stated by the respondents therein that the petitioner had retired on February 29, 2016 and all his retiral benefits have been paid in full on the date of retirement and even today, he continues to receive the pension. It was in these circumstances, the Court has in paragraphs 15 stated as under:

“15. As rightly pointed out by the learned counsel for the respondents, relying on the judgment of the Hon'ble Supreme Court, it is a clear case that petitioner has been in deep slumber and slept over his right and after a lapse of nearly 7 years, the petitioner has woken up and even then he did not choose to challenge the disciplinary proceedings awarding punishment to him. Instead, from 2011 to 2016 upto the filing of the Writ Petition, the petitioner has only repeatedly sent representations which would not further the case of the petitioner in any manner. The principle that Court will not come to the rescue of a person who sleeps over his rights applies to Writ Petitions as well. No doubt unlike the Limitation Act, there is no specific period prescribed for filing of a Writ Petition. However, it is now well settled position of law that when a petitioner complains of violation of principles of natural justice or seeks relief on the ground of violation of fundamental rights etc., he should approach the Court at the earliest. The petitioner in this case, admittedly, has not chosen to approach this Court at the earliest point of time. Further, one of the main purpose of not entertaining Writ Petitions citing grounds of delay and laches, especially in disciplinary matters, is to ensure that the witnesses are available and documents are also intact, so that an enquiry, if directed, can be successfully conducted and completed. Admittedly, the impugned order in appeal came to be passed way back in February 2005 and the petitioner has approached this Court only in 2016. The Courts cannot, in all circumstances, expect the employer to retain all relevant records pertaining to the Writ Petitioner. According to the respondents the matter attained finality way back in 2005 itself. Therefore, even on this ground the Writ Petition cannot be entertained as it suffers from inordinate delay and laches.”



(Emphasis supplied)

33. Suffice to state that the judgment Nos.(a) to (f) as relied upon by Mr. Singh have no applicability to the facts of this case as in none of the cases, the Court was concerned with the issue of revised pay-scale or grant of arrears thereof as we are concerned in this case.

34. In so far as the judgment in the case of **Tarsem Singh (supra)** is concerned, on which heavy reliance has been placed by Mr. Singh, paragraph 7 of the same reads as under:

“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 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.”

(Emphasis supplied)



35. In fact in ***Tarsem Singh (supra)***, the Supreme Court has held that, if the issue relates to payment or re-fixation of pay or pension, relief can be granted in spite of delay as it does not affect the rights of third parties.

36. In fact, in ***Arvind Kumar Srivastava (supra)*** the Supreme Court has drawn an exception to paragraph 22.2 in paragraph 22.3, which are reproduced as under:

“22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

(Emphasis supplied)



37. We have been informed that, when K.K. Braroo made representation to the respondents seeking benefit of the Judgment in the case of the **R.K. Bhanti (supra)** he was told on July 7, 2009 that, no action on his representation can be taken as the issue is pending decision in the High Court. So, in that sense, the respondents themselves have not given the benefit to the persons who are similarly situated like the Bhanti. It follows, even if the petitioners had submitted representation, the respondents would have rejected the same. Surely, the plea of delay and laches is clearly unsustainable.

38. That apart, we find that the Tribunal did not give any reason in denying the arrears w.e.f. January 1, 1996. Once the Tribunal, in principle has accepted the claim of the petitioners for grant of revised pay-scale and has granted the arrears of salary for future period, there is no reason for it to deny the arrears for the past, more so, in the case of **K.K. Braroo (supra)**, decided subsequent to the impugned orders in these O.A's the same Bench has extended the benefit of revised pay scale to the applicants therein as was done in **R.K. Bhanti (supra)**, for the past period as well, to be paid within three months from the date of receipt of a certified copy of the said order. We have been informed that the judgment in the case of **K.K. Braroo (supra)** has been implemented by the respondent, vide order dated July 19, 2019, which reads as under:

**ORDER**

The Competent Authority viz. Ministry of Shipping vide letter No.C-18018/19/2016-SL dated 8th July, 2019 has conveyed the approval to allow the relief sought by Shri K.K. Braroo, Deputy Director General (Retired), Shri P.P. Sinha, Deputy Director General (Retired) and Capt A M Surej, Director General (Retired) as directed by the Hon'ble CAT, Principal Bench, New Delhi vide order dated 28th May, 2009 in O.A. No.2509/2016, at par with the relief granted to Shri R.K. Bhanti, to place them in the pay scale of Rs.12000-16500 as Deputy Director and in the scale of Rs.14300-18300 as Director w.e.f.01.01.1996 or from the date of their promotion in the respective post as mentioned below:

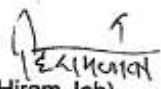
S. No.	Name	Promotion to the post of Deputy Director	Promotion to the post of Director	Date Retirement
1.	Capt A M Surej, Director General (Retired)	Holding the post of Deputy Director as on 01.01.1996	25.07.2001	30.11.2015
2.	Shri K.K. Braroo, Deputy Director General (Retired)	11.06.1997	20.10.2003	30.06.2015
3.	Shri P.P. Sinha, Deputy Director General (Retired)	18.12.1999	23.06.2004	31.12.2013

Shri K.K. Braroo, Deputy Director General (Retired), Shri P.P. Sinha, Deputy Director General (Retired) and Capt A M Surej, Director General (Retired) are entitled to draw arrears of pay & allowances from the date of their promotion mentioned above in the post of Deputy Director and Director.

The excess payment earlier waived vide Ministry of Finance U.O. Note No.87/2/2000-IC dated 19th May, 2004 will be adjusted at the time of above payment.

Any excess payment due to above fixation is recoverable as per Government guidelines.

This issues with the approval of Director General.


(Hiram Job)
Administrative Officer

39. The denial of such benefits by the Tribunal is a clear case of violation of Article 14 of the Constitution of India. We are of the view that, once the High Court of Gujarat has upheld the judgment in the case of **R.K. Bhanti (supra)** which has attained finality and has been implemented by the respondents, there was no reason for the respondents to deny the similar benefits to the petitioners and similarly placed persons rather than forcing them to approach the Tribunal/Courts.



40. The Constitution Bench of the Supreme Court in the case of ***K.C. Sharma and Ors. v. Union of India and Ors., (1997) 6 SCC 721*** has held in paragraph 6 as under:

“6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of OA No. 774 of 1994 is condoned and the said application is allowed. The appellants would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated 16-12-1993 in OAs Nos. 395-403 of 1993 and connected matters. No order as to costs.”

(emphasis supplied)

41. In fact in ***Arvind Kumar Srivastava (supra)***, the Supreme Court has in paragraph 22.3 has stated that the delay and laches shall not be applicable in those cases where the judgment pronounced by the High Court was *in rem*, with an intention to give the benefit to all similarly placed persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to extend the benefit thereof to all similarly placed persons.

42. That being the law laid down by the Supreme Court, the grant of pay-scales in ***R.K. Bhanti (supra)***, is a declaration *in rem* which benefit ought to have been given by the respondents to similarly situated persons without they approaching the Tribunal. Having not done that, there was no reason for the Tribunal to deny the benefit of arrears for the earlier period. It must be stated that, the denial by the Tribunal the arrears of salary pursuant to its directions for grant of



revised scales to the petitioners is illegal and to that extent it is set aside.

43. The respondents are directed to grant the arrears of pay for the earlier period w.e.f. January 1, 1996 to the petitioners within a period of three months from today.

44. The writ petitions are disposed of.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

OCTOBER 04, 2023/jg