

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(102)

CWP-6673-2024

Date of decision: - 22.03.2024

Rohtash Kumar

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Suresh Kumar Kaushik, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to quash the impugned report of departmental enquiry dated 20.01.2012 (Annexure P-2) as well as the impugned order dated 18.05.2012 (Annexure P-5) whereby the petitioner was dismissed from the post of Constable. Challenge is also to the order dated 06.08.2012 (Annexure P-6) passed by respondent No.3 whereby appeal of the petitioner against the punishment of dismissal from service has been rejected and also to order dated 10.07.2014 (Annexure P-7) whereby respondent No.2 partly accepted the revision petition filed by the petitioner by reducing the punishment of dismissal to the stoppage of two annual increments with permanent effect.

2. Brief facts of the present case are that the petitioner was

selected as a Constable on regular basis in the staff of Pipe Band of the respondents and while working on the said post, the petitioner was suspended and a charge-sheet dated 29.12.2011 (Annexure P-1) was issued to the petitioner on the charges that he was deputed to participate in the 12th All Indian Pipe Band Competition with the band team of 2nd Battalion on 19.12.2011 at the Group Centre of the Central Reserve Police Force, Kadipur, Gurugram and during the said competition, when Inspector Ajit Singh, Team Manager of Haryana Police Band inspected the uniforms of the Band Team Soldiers, he found that the petitioner was not wearing a clean and formal uniform nor were his shoes polished and although he was duty bound to carry the flag in front of Band Team, the petitioner threw the flag and went away. The petitioner was accordingly suspended and the departmental proceedings were initiated against the petitioner on the said charges and the inquiry officer was appointed. The inquiry officer, vide report dated 20.01.2012 (Annexure P-2), found that the petitioner was guilty of the charges framed against him and found that the petitioner was not wearing the uniform as per the pattern, did not polish his shoes, threw the flag and left on the date of the competition. A perusal of the said report shows that as many as 7 prosecution witnesses were examined by the department and due opportunity was given to the petitioner to lead his defence and the petitioner had also examined two witnesses in his defence. Vide a show cause notice dated 30.01.2012 (Annexure P-3), the competent authority had proposed to pass the punishment of dismissal and the petitioner was granted an opportunity to file a reply, within 15 days of receipt of the said notice. The petitioner

filed a reply (Annexure P-4) and the Commandant, 2nd Bn. Haryana Armed Police, Madhuban (Karnal), who was the competent authority, vide order dated 18.05.2012 (Annexure P-5), after considering all the facts and circumstances, passed an order of dismissal from service with immediate effect. A perusal of the said order would show that an opportunity of personal hearing was given to the petitioner on 16.05.2012 and it was observed that the petitioner had not given a satisfactory reply to the allegations levelled against him. The petitioner filed an appeal, which was dismissed by the Inspector General, Haryana Armed Police, Madhuban on 06.08.2012 (Annexure P-6) and in the said order, it was observed that the departmental proceedings were conducted as per prescribed procedure laid down in the Punjab Police Rules and there was no illegality or infirmity in the departmental proceedings and the petitioner was personally heard on 24.07.2012 and he could not add anything new to the written submissions already made. It was further observed that on the occasion of a National level event, not wearing the proper and clean uniform, throwing the State Police flag on the ground and leaving the mega function at his will was an act of grave misconduct and negligence on his part. It was further observed that the petitioner was a habitual offender of absenteeism and was irresponsible. The petitioner filed a revision petition before the Director General of Police, Haryana. The Director General of Police, Haryana, vide order dated 10.07.2014 (Annexure P-7) had taken a lenient view and reduced the punishment of dismissal to that of stoppage of two annual increments with permanent effect and he was ordered to be reinstated in service with immediate

effect, but was not to be paid anything for the period he remained out of service on the principle of 'no work no pay'. A perusal of the said order would show that the Director General of Police, Haryana had come to the conclusion that the charges against the petitioner were proved during the course of enquiry and due opportunity was also given to the petitioner, but by taking a lenient view, the said order was passed. Although, it is the case of the petitioner that a mercy petition (Annexure P-8) to the Additional Chief Secretary, Govt. of Haryana, Home Department, Chandigarh had been filed, but neither any date has been mentioned in the said mercy petition, nor any such date has been mentioned in the present petition. Upon query raised by this Court, learned counsel for the petitioner has submitted that the same was filed in the year 2018, but he has not been able to refer any provision of law under which the said mercy petition is maintainable.

3. A perusal of the admitted facts would show that the present petition has been filed after a delay of more than 9 years and 7 months after the passing of the order dated 10.07.2014 (Annexure P-7). The mercy petition (Annexure P-8) is not shown to be maintainable under any provision of law and no date of the said mercy petition has been mentioned either in the mercy petition or in the writ petition, but even in case the date of the said mercy petition is taken to be in the year 2018, then also, there is a delay of more than 4 years in filing of the said mercy petition and a further delay of more than 5 years in filing of the present petition even from the said mercy petition. The arguments raised by the petitioner to explain the delay is that the petitioner has a recurring cause

of action inasmuch as in case the impugned orders are set aside and the punishment of stoppage of two annual increments with permanent effect is set aside, then his monthly salary/benefits would increase. The second argument to explain delay is filing of the mercy petition

4. The Hon'ble Supreme Court as well as this Court has repeatedly held that a petition filed after an unexplained lapse of time should not be entertained and mere filing of repeated representations or even directions to decide said representations would not give rise to a fresh cause of action. Reference in this respect may be made to the judgment passed by the Hon'ble Supreme Court of India in "**Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu**" reported as **2014(4) SCC 108** in which one of the grounds for setting aside the judgment of the High Court was the fact that the petitioner therein had approached the High Court after a delay of 4 years and it was observed by the Hon'ble Supreme Court that it was the duty of the Court to scrutinize whether such an enormous delay is to be ignored and the Hon'ble Supreme Court came to the conclusion that interference by the High Court after a lapse of 4 years was unjustified and that the writ petition should not have been entertained.

5. The Hon'ble Supreme Court of India in the case "**State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others**" reported as **2013(12) SCC 179** had observed that repeated representations or reply to such representations cannot furnish a fresh cause of action or revive a stale or dead claim and that the issue of limitation or delay should be considered with reference to the original

cause of action and not with reference to the date on which an order was passed in compliance of the Court's directions and 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.

6. In “**Chairman, U.P. Jal Nigam and Anr. v. Jaswant Singh & Anr.**” reported as **2006(11) SCC 464**, the Hon'ble Supreme Court had rejected the claim of the persons who were guilty of delay and had approached the Courts after some years and had sought to raise the plea that similarly situated persons, who had filed the writ petitions earlier, had been granted the relief.

7. The judgment of the Hon'ble Supreme Court in “**State of Uttaranchal's** case (supra)” has further been referred to in the latest judgment of the Hon'ble Supreme Court passed in **State of West Bengal Vs. Debabrata Tiwari and Others reported as 2023-SCC-Online-SC-219**. The relevant portion of the same is reproduced hereinbelow:-

*“37. Whether the above doctrine of laches which dis-entitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution came up for consideration before a Constitution Bench of this Court in **Moon Mills Ltd. v. M. R. Meher, President, Industrial Court, Bombay, AIR 1967 SC 1450**. In the said case, it was regarded as a principle that dis-entitled a party for grant of relief from a High Court in the exercise of its discretionary power under A Article 226Â of the Constitution.*

*38. In **State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566** this Court restated the principle articulated in earlier pronouncements in the following words:*

“9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and

the lethargic. If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

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40. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005-2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in *State of Uttaranchal v. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179, wherein the following observations were made:

"19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time."

8. It would also be relevant to take note of the judgment of the Hon'ble Division Bench dated 07.07.2022 passed in ***LPA-1088-2018*** titled as ***"State of Punjab and others vs. Shingara Singh and others"*** and other connected matters. The said case was with respect to the Home guard Volunteers who had worked in the State of Punjab and in the said

case two primary issues were framed. The first being with respect to the maintainability of the writ petitions at belated stage after several years on account of legal notices having been served and the directions having been issued by the Court to consider the same and as to whether the claim would stand barred by delay and laches or not. The second issue which was framed was on the aspect as to whether the Home Guards have any indefeasible right to be recalled for duty on account of certain persons having been taken back or recalled. The Hon'ble Division Bench after considering the law laid down by the Hon'ble Supreme Court in various judgments including that of ***C.Jacob vs. Director of Geology & Min. Indus. Est. and another*** reported as ***2008 (10) SCC 115*** as well as in the ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava*** reported as ***(2015) 1 SCC 347*** observed that the litigation had been initiated at a belated stage and after considering the said aspect set aside the judgment of the learned Single Judge who had entertained and allowed the writ petitions inspite of delay. The relevant portion of the said judgment is reproduced hereinbelow:-

*“2. The present set of appeals arise out of the three different judgments passed by three different learned Single Judges. The relief has been granted vide judgment **dated 23.02.2017 in CWP No. 23475 of 2015, Jarnail Singh vs. State of Punjab and others**. Similarly, in **CWP No. 22640 of 2011, Shingara Singh and others vs. State of Punjab and others dated 25.01.2018**, the relief has been granted to the extent that the learned Single Judge has directed the State to consider the case of the petitioners in terms of cases of Shingara Singh and Paramjit Kumar, who had been recalled on duty as Home Guards Volunteers. The relief has been declined in **CWP No. 19229 of 2018, Joginder Singh and others vs. State of Punjab and others alongwith 17 other cases on 06.06.2019**.*

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12. Keeping in view the above, the following two issues would arise for consideration:

(i) As to whether the writ petitions were maintainable at the belated stage after 15 years, only on account of legal notices having been served and directions issued by this Court to consider the same and whether the claim stood barred by delay and laches?

(ii) That on account of certain persons being taken back or recalled would entitle the persons employed earlier as Home Guards to have any indefeasible right as such to be recalled for duty?

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15. A co-ordinate Bench, of which one of us was a member, G.S. Sandhawalia, J., had dismissed **LPA No. 73 of 2021, Jagjit Singh vs. State of Punjab and another on 30.11.2021** wherein also, there was absence from 1994 after a service of less than 3 years. It had been noticed that the order under challenge passed by the Commandant General, Punjab Home Guard was dated 27.07.2020 whereby, the legal notice dated 06.11.2019 was being rejected in view of the orders passed by the writ Court in CWP No. 984 of 2020 on 17.03.2020. The same was dismissed on 30.11.2021 while also taking into account the judgment of the Apex Court in **C. Jacob vs. Director of Geology & Min. Indus. Est. and another, 2008 (10) SCC 115** that the cause of action does not get revived. The relevant portion of the judgment reads thus:-

“6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. **He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court).** Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition

before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. 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 realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the exemployee 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.

7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee

(person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of acknowledgment of a jural relationship' to give rise to a fresh cause of action.

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22. In such circumstances, we are of the considered opinion, by answering the questions above that the writ petitions were reviving a dead cause which was burdened with delay and laches and were not liable to be entertained by the learned Single Judges.”

9. A revision petition was filed against the said judgment i.e., RA-LP-15-2022 which was dismissed vide order dated 11.11.2022. The Special Leave Petition (Civil) Diary no.4592/2023 filed against the said judgment dated 07.07.2022 and 11.11.2022 was also dismissed by the Hon'ble Supreme Court vide order dated 13.03.2023.

10. As has been stated herein-above, there is a delay of more than 9 years and 7 months from the date of passing the order dated 10.07.2014 (Annexure P-7), vide which the revision petition filed by the petitioner was partly allowed and thus, the present petition deserves to be dismissed solely on the ground of delay and laches. Both the arguments raised by learned counsel for the petitioner for explaining delay are misconceived and deserve to be rejected. With respect to argument that a mercy petition has been filed, it would be relevant to note that learned counsel for the petitioner has not been able to refer any provision of law under which the said mercy petition is maintainable. Neither any date of the said mercy petition has been mentioned in the petition (Annexure P-8) nor has been given in the present petition and even assuming the year of

filing the mercy petition given by the petitioner during the course of arguments i.e. 2018 is taken into consideration, then also, the said mercy petition was filed after a delay of 4 years from the date of passing of the order dated 10.07.2014 (Annexure P-7) and the present petition has been filed after a further delay of more than 5 years from the date of the mercy petition and thus, mere filing of the said mercy petition would not condone the delay. The second argument raised by learned counsel for the petitioner to the effect that there is a recurring cause of action in the present case is completely misconceived. The impugned order has been passed in pursuance of a departmental enquiry and cause of action to challenge the said impugned order arises on the date when the said impugned order has been passed. The appeal filed as per statutory rules, which was dismissed on 06.08.2012 (Annexure P-6) and further the revision petition filed under statutory rule was partly allowed on 10.07.2014 (Annexure P-7) and thus, the cause of action to file the present writ petition to challenge the said order dated 10.07.2014 (Annexure P-7) was from the date the said order was passed, but however the present writ petition was filed after a delay of more than 9 years and 7 months. Further, no law has been cited by learned counsel for the petitioner in support of his arguments and thus, the present writ petition deserves to be dismissed solely on the ground of delay and laches. Accordingly, the present writ petition is dismissed.

March 22, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes