



\$~

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 4624/2024

Date of decision: 01.04.2024

RAHUL SHARMA

..... Petitioner

Through: Ms. Jasvinder Kaur, Adv.

versus

DELHI METRO RAIL CORPORATION & ORS.

..... Respondent

Through: Mr. V.S.R.Krishna, Adv. for R-1.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

REKHA PALLI, J (ORAL)

CM APPL. 18992/2024 -Ex

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 4624/2024

3. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 31.01.2024 passed by the learned Central Administrative (the Tribunal) in M.A. No. 3265/2023 in O.A. No. 2808/2023.
4. Vide the impugned order, the learned Tribunal has dismissed the petitioner's application seeking condonation of delay of 2230 days in filing the O.A. and has consequently dismissed the OA being barred by time. While declining to condone the delay, the learned Tribunal



noted the fact that the petitioner was well aware of his seniority position in 2013 itself. Furthermore, a seniority list of Assistant Managers on which post the petitioner was then working, was duly circulated in the year 2015; it is based on this seniority list that the petitioner was promoted as Manager in 2018, but he still chose to approach the Tribunal only in 2023. The learned Tribunal, therefore, held that there was no ground to condone this inordinate delay and unsettle the settled seniority position qua other employees as prayed for by the petitioner.

5. In support of the petition, learned counsel for the petitioner reiterates the submissions made before the learned Tribunal. She submits that the impugned order is perverse as the learned Tribunal erred in dismissing the petitioner's original application without appreciating that while granting the petitioner additional time to join service as an Assistant Manager, he was never informed that his seniority will be affected due to the delay on his part in joining service. She contends that this was a fit case where the learned Tribunal ought to have condoned the delay and examine the matter on merits. She, therefore, prays that the impugned order be set aside and the O.A. be remanded back to the learned Tribunal for a decision on merits.
6. Having considered the submissions of the learned counsel for the petitioner and perused the record, we find that the petitioner had without furnishing any justifiable reasons, approached the learned Tribunal in 2023 to assail a seniority list of Assistant Managers, which stood finalized in 2015 itself. Even before us, learned counsel for the petitioner has simply urged that the petitioner's claim ought to



have been examined on merits without furnishing any reason whatsoever for the delay of about 8 years in approaching the learned Tribunal. As rightly held by the learned Tribunal, based on this seniority list circulated in 2015, which the petitioner now seeks to assail, he was promoted as a Manager in 2018, which promotion he duly accepted without any demur. It is, therefore, evident that the petitioner was always aware of his position in the seniority list and despite opportunity, failed to challenge the same when it was circulated. Having failed to do so, the petitioner cannot, at this stage, be permitted to urge that having topped in the recruitment examination, he ought to have been placed at number one position in the seniority list of Assistant Managers. Entertaining the petitioner's claim at this belated stage would affect the seniority of various other employees and in our view cannot be permitted especially when not only the petitioner himself but even the other affected employees stand promoted as Manager.

7. In this regard, reference may be made to the decision of the Apex Court in *Shiba Shankar Mohapatra vs. State of Orissa*, (2010) 12 SCC 471, wherein the Court considered the effect of delay in challenging the seniority list and held that any claim for seniority at a belated stage should not be entertained as it seeks to disturb the vested rights that have accrued to the other persons in the intervening period. The relevant observations of the Apex Court as contained in paras 18, 21 and 29 read as under:

“18. The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shankar Deodhar v.



State of Maharashtra [(1974) 1 SCC 317 : 1974 SCC (L&S) 137] considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] , wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under : (Tilokchand case [(1969) 1 SCC 110] , SCC p. 115, para 7)

“7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.”

21. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in K.R. Mudgal v. R.P. Singh [(1986) 4 SCC 531 : 1987 SCC (L&S) 6 : AIR 1986 SC 2086] . The Court held as under : (SCC pp. 532 & 536, paras 2 & 7)

“2. ... A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. ...

7. ... Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. ... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches.”

(emphasis added)



29. *It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (Vide Aflatoon v. Lt. Governor of Delhi [(1975) 4 SCC 285 : AIR 1974 SC 2077] ; State of Mysore v. V.K. Kangan [(1976) 2 SCC 895 : AIR 1975 SC 2190] ; Municipal Council, Ahmednagar v. Shah Hyder Beig [(2000) 2 SCC 48] ; Inderjit Gupta v. Union of India [(2001) 6 SCC 637 : 2001 SCC (L&S) 1083] ; Shiv Dass v. Union of India [(2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395] ; A.P. SRTC v. N. Satyanarayana [(2008) 1 SCC 210 : (2008) 1 SCC (L&S) 161] and City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla [(2009) 1 SCC 168]).”*

8. For the aforesaid reasons, we have no hesitation in concurring with the learned Tribunal that no ground was made out to condone the delay on the part of the petitioner in approaching the Tribunal or entertaining his belated claim. The writ petition being meritless is, accordingly, dismissed.

**REKHA PALLI
(JUDGE)**

**TUSHAR RAO GEDELA
(JUDGE)**

APRIL 1, 2024/al