Reserved on: 11.01.2021

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 05th day of July, 2021

Hon'ble Mr. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Devendra Chaudhry, Member (A)

M.A. No. 2109 of 2019
In
Diary. No. 3408 of 2019

Praveeen Kumar Srivastava, a/a 53 years son of Late Shri Ganesh Prasad Srivastava before (Compulsory Retirement from Service) posted as Electrician Grade-II staff no. 12364 under Junior Engineer/Senior Engineer/E.T. Diesel Locomotive Works Varanasi Resident of 123 D East Colony DLW Varanasi.

Applicant

By Advocate: Shri Mohan Srivastava

Vs.

1. Union of India through General Manager, Diesel Locomotive Works, Varanasi.
2. Chief Mechanical Engineer (P) and Revisional Authority, DLW, Varanasi.
3. Deputy Chief Mechanical Engineer/Engine and Appellate Authority, DLW, Varanasi.
4. Assistant Works Manager/Engine Diesel Locomotive Works Varanasi/ Disciplinary Authority.
5. Chief Personnel Officer, Diesel Locomotive Works, Varanasi.
6. Senior Section Engineer/Es-Enquiry Officer. Diesel Locomotive Works, Varanasi.

Respondents

By Advocate: Shri Sanjeev Kumar Pandey

O R D E R

Delivered by Hon'ble Mr. Devendra Chaudhry, Member (A)

The present application has been filed seeking modification of the order dated 06.04.2012 passed by Respondent No.-2 Chief Mechanical Engineer and Revisional Authority, Diesel Locomotive Works(DLW), Varanasi along with quashing of charge sheet dated 19.11.2020 and counting of period of service of the applicant from the date of joining that is 29.06.1991 to the date of impugned punishment order date 06.04.2012.

2. Since the relief sought is with respect to actions taken by respondent more than 07 years before the filing of this Application in Dy No. 3408/2019vide date 24.09.2019, accordingly a delay condonation application M.A. No 2109/2019 has also been filed seeking condonation of delay.

3. Therefore, before going into the merits of the case, ld. respondent counsel argued that the delay condonation application should be decided first or else there will be failure of justice. Accordingly, we have heard the ld. counsel for both the parties at length on the issue of delay condonationin filing the application. The documents and pleadings filed by the parties have been perused with care.

4. For the purposes of consideration of the delay condonation application it would be useful to recount brief facts of the case leading up to the delay.

5. *Per* applicant, brief facts of the case are that the applicant was appointed as Khalasi helper in the year 1991 at DLW Varanasi. In course of time he was promoted and was finally working as Electrician Grade-II in July 2004. That in the year 2009 the applicant fell ill and thereafter underwent treatment at various hospitals even while attending office to work on and off as his health permitted. That, neurological problems, were noticed in his spine for which he got treatment at Sanjay Gandhi PGI Lucknow. That as per medical advice he applied for change of cadre and allocation of any other appropriate work but the respondents did not give any such relief. That the applicant was then issued Charge Memo under Railway employees Discipline and Appeal Rules, 1968. That the enquiry resulted in recommendation of major penalty and a removal order was passed against the applicant vide date 17.03.2011. That aggrieved against the order of removal the applicant preferred an OA No. 838 of 2011 before this Tribunal in which the Tribunal vide order dated 08.12.2011 dismissed the original application as withdrawn even while giving direction to Respondent No. 4 to decide the pending Appeal of the applicant in a period of two months (Annexure-19). That the Appeal of the applicant was rejected vide order dated

06.02.2012 and the original order of removal was upheld. That the applicant thereafter filed a Revision Application on 29.02.2012 which was decided vide impugned order dated 06.04.2012 whereby the removal order was modified to that of compulsory retirement. That thereafter the applicant filed a Mercy Petition dated 24.10.2013 before the Chairman Railway Board but no orders have been passed on the same till date even while the applicant has been pursuing the matter at all places including through the Railway-Minister but nothing has happened and the applicant has been waiting for relief. That after having lost all hope he has now come before the Tribunal for redressal of his grievance as prayed in the OA. That there has been no delay incoming before the Tribunal with respect to his grievance of challenging the impugned orders of compulsory retirement of 2012 and so the delay condonation application should be decided in his favour and the OA allowed on merits.

6. *Per Contra,* the respondents have filed counter against the delay in which it is submitted that the applicant has failed to give an account of the day-by-day delay which is of a period of more than 07 years from the date of the impugned order to the filing of the original application on 24.09.2019. That as per the law laid down by the Hon. Apex Court in the matter of S.S.Rathore vs State of MP 9 1989 4 SCC 582 and in the matter of Basavaraj and Anr. vs The Special land acquisition

officer AIR 2014 SC 746 it has been clearly held that, where a case has been presented in the court beyond limitation the applicant has to explain to the court as to what was the sufficient cause which prevented him to approach the court within limitation period. That since the applicant has only submitted a vague reply of pursuing the matter in an unending manner since 2012, therefore there is no substance in the explanation by the applicant of the immense delay, therefore the delay condonation application is liable to be dismissed.

7. Applicant has filed Rejoinder to the Objection to the Delay Condonation Application in which facts as stated earlier have been mostly reiterated and it is submitted that the respondents have acted in a high-handed manner against the applicant and the applicant deserves justice at the hands of the Tribunal.

8. We have heard the ld. counsels for the parties at length and perused the records available carefully. *Per* facts of the case, it is quite clear and very loudly so, that the applicant was given a compassionate hearing at the revision level and his punishment of removal from the service due was reduced to that of Compulsory Retirement which was issued on 06.04.2012 and since then the applicant on own admission has been pursuing the matter at various fora for setting aside of the order of compulsory retirement and complete reinstatement in the service. The fact which stares at our face

is that he has not come to the refuge of the court for all of more than seven years. This is a huge time lapse and has to be examined under the lens of the law of the land on delays.

9. For doing this, we need to understand the concept of delay and laches. On doing so we find that as per generally accepted principles on law, the word laches is derived from French. Now let us examine this further as follows:

> ***'laches'****derives from French meaning: remissness, dilatoriness (from Old French laschesse) is a lack of diligence and activity in making a legal claim, or moving forward with legal enforcement of a right, particularly in regard to equity. This means that it is an unreasonable delay that can be viewed as prejudicing the opposing party. When asserted in litigation, it is an equity defense, that is, a defense to a claim for an equitable remedy. The person invoking laches is asserting that an opposing party has "slept on its rights", and that, as a result of this delay, circumstances have changed, witnesses or evidence may have been lost or no longer available, etc., such that it is no longer a just resolution to grant the plaintiff's claim. Laches is associated with the maxim of equity, "Equity aids the vigilant, not the sleeping ones" who sleep on their rights. Put another way, failure to assert one's rights in a timely manner can result in a claim being barred by laches.Invoking laches is a reference to a lack of diligence and activity in making a legal claim, or moving forward with legal enforcement of a right, in particular with regard to equity, and so is an "unreasonable delay pursuing a right or claim, in a way that prejudices the [opposing] party".When asserted in litigation, it is an equitable defense, that is, a defense to a claim for an equitable remedy.The essential element of laches is an unreasonable delay by the plaintiff in bringing the claim; because laches is an equitable defense, it is ordinarily applied only to claims for equitable relief (such as injunctions), and not to claims for legal relief (such as damages). The person invoking laches is asserting that an opposing party has "slept on its rights", and that, as a result of this delay, witnesses and/or evidence may have been lost or no longer available, and circumstances have changed such that it is no longer just to grant the plaintiff's original claim, hence, laches is associated with the maxim of equity: Vigilantibus non dormientibusæquitassubvenit ("Equity aids the vigilant, not the sleeping ones [that is, those who sleep on their rights]"). Put another way, failure to assert one's rights in a timely manner can result in a claim being barred by laches. Sometimes courts will also require that the party invoking the doctrine has changed its position as a result of the delay, but that requirement is more typical of the related (but*

more stringent) defense and equally cause of action of estoppel. A claim of laches requires the following components:

i. a delay in bringing the action,
ii. a delay that is unreasonable and
iii. *that prejudices the defendant.*

The period of delay begins when the plaintiff knew, or reasonably ought to have known, that the cause of action existed; the period of delay ends only when the legal action is formally filed.[8] Informing or warning the defendant of the cause of action (for example by sending a cease-and-desist letter or merely threatening a lawsuit) does not, by itself, end the period of delay.To invoke laches the delay by the opposing party in initiating the lawsuit must be unreasonable. The courts have recognized the following causes of delay as reasonable:

- *the exhaustion of remedies through the administrative process*
- *the evaluation and preparation of a complicated claim*
- *to determine whether the scope of proposed infringement will justify the cost of litigation*

Unreasonable delay may also prejudice the rights of third-parties who were unknown in the case, earlier but whose rights got created in the intervening period of the delay (e.g.: the defendant inducts new persons on a disputed property by sale, or by lease). A defense lawyer raising the defense of laches against a motion for injunctive relief (a form of equitable relief) might argue that the plaintiff comes "waltzing in at the eleventh hour" when it is now too late to grant the relief sought, at least not without causing great harm that the plaintiff could have avoided. In certain types of cases (for example, cases involving time-sensitive matters, such as elections), a delay of even a few days is likely to be met with a defense of laches, even where the applicable statute of limitations might allow the type of action to be commenced within a much longer time period. In courts in the United States, laches has often been applied even where a statute of limitations exists, although there is a division of authority on this point. If a court does accept the laches defense, it can decide either to deny the request for equitable relief or to narrow the equitable relief that it would otherwise give. Even if the court denies equitable relief to a plaintiff because of laches, the plaintiff may still have a claim for legal relief if the statute of limitations has not run out.

10. Now let us examine the citations, some of which are re-produced below: -

(i) In the matter of **Shiba Shankar Mohapatra vs State of Orissa, the Hon Apex Court in a two-judge bench comprising Hon Justices, Dr BS Chauhan and**

TarunChaterjee vide judgement dt. 12.11.2009 disentitled persons to relief, if they were not diligent to their cause, by holding as follows:

> *21. "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 latches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum."*

In fact, the Hon'ble Supreme Court found that the issue of delay and latches goes to the root of the cause and held in later part of the judgement that the petition ought to be rejected only on the ground of delay and latches in the following words:

> *"32. ...We are of the considered opinion that the said application ought to have been rejected by the Tribunal only on the ground of delay and latches. The High Court has also not dealt with this issue, however, it goes to the root of the cause. Such an inordinate delay cannot be ignored particularly when the issue of delay has been pressed in service before this Court."*

(ii) Similarly, in the matter of **Ranjan Kumar and Ors. v. State of Bihar and Ors, (2014) 16 SCC 187**it has been held that:

"...We cannot let sympathy for the applicant fog our judgement and as observed in ***Farwell LJ in Latham vs Richard Johnson and Nephew Limited (1913) (1) KB 398 that:"..we must be careful not to allow our sympathy with the plaintiff to affect our judgement. Sentiment is a***

dangerous will o' wisp to take as guide in the search for legal principles''

(iii) **The Hon Apex Court in the matter of Harwindra Kumar v. Chief Engineer, Karmik, vide judgement dated 18.11.2005 by a two-judge bench comprising Hon Chief Justice and Hon Justice BN Agarwal, the has held that:**

> *"... this Court had earlier held that these employees were in fact entitled to continue in service up to the age of 60 years. After the aforesaid decision, a spat of writ petitions came to be filed in the High Court by those who had retired long back. The question that arose for consideration was as to whether the employees who did not wake up to challenge their retirement orders, and accepted the same, and had collected their post retirement benefits as well, could be given relief in the light of the decision delivered in Harwindra Kumar (supra). The Court refused to extend the benefit applying the principle of delay and laches. It was held that an important factor in exercise of discretionary relief under Article 226 of the Constitution of India is laches and delay. When a person who is not vigilant of his rights and acquiesces into the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to the persons similarly situated who were vigilant about their rights and challenged their retirement. In para 7, the Court quoted from M/s. Rup Diamonds &Ors. (supra). In para 8, S.M. Kotrayya (supra) was taken note of. Some other judgments on the same principle of laches and delays are taken note of in paras 9 to 11 which are as follows:*
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> *"9. Similarly in JagdishLal v. State of Haryana, (1997) 6 SCC 538, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows: (SCC p. 542) "The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Union of India v. Virpal Singh Chauhan, (195) 6 SCC 684. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."*
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> *10. In Union of India v. C.K. Dharagupta, (1997) 3 SCC 395, it was observed as follows:*
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> *"9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi v. Union of India, OA No. 497 of 1986 decided on 17-3-1987, gives relief only to Joshi, the benefit of the*

said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3- 1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."

11. In Govt. of W.B. v. Tarun K. Roy, (1997) 3 SCC 395, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows: (SCC pp. 359-60, para 34) "34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in State of W.B. v. Debdas Kumar, 1991 Supp (1) SCC 138. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law." The Court also quoted following passage from the Halsbury's Laws of England (para 911, p.395):

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii)any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches." Holding that the respondents had also acquiesced in accepting the retirements, the appeal of U.P. Jal Nigam was allowed with the following reasons:

"13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If

they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?" The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) 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.

(2) However, this principle is subject to well recognized 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. (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 person. 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 &Ors. v. Union of India (supra). 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..."

(iv) The Hon Delhi High Court in the matter of **Prakash Singh vs Union Of India And Anr. on 3 June, 2016 held as follows:**

"...10. In the case of B.S. Bajwa (supra), the Supreme Court upheld rejection of the prayer for ignoring and overlooking the delay of nearly a decade in filing the writ petition. There was a seniority dispute and the applicant had been treated junior all along. The inordinate delay itself was sufficient to decline interference. These observations were again made when the government servant had invoked writ jurisdiction under Article 226 of the Constitution, where no specific period of limitation is prescribed, but general principles of delay and laches apply. The government servant relying upon a favourable court decision in another case, had claimed seniority. Plea of parity was raised but was rejected. Similarly, in P.S Sadasivaswamy (supra), a matter relating to a writ petition under Article 226 of the Constitution, the claim of the writ petitioner was rejected on the ground that it had the effect of unscrambling the scrambled egg, for he had approached the Court after nearly 14 years. At the relevant time, he had failed to question the promotion of his "juniors". A person aggrieved by an order promoting his juniors should approach the Court within six months or a year of such promotion. The Supreme Court observed that though the Limitation Act was not applicable when Courts exercise their powers under Article 226, albeit the writ courts do not interfere in a matter after a passage of time. It would be sound and wise not to exercise discretion when the aggrieved person does not approach the Court expeditiously. When the petitioner/ applicant allow things to happen and approach the Court by way of a stale claim, he seeks to unsettle the settled matters, and this should not be permitted.

(v) The Doctrine of Laches emanates from the principle that the Courts will not help people who sleep over their rights and helps only those who are aware and vigilant about their rights. A party is said to be guilty of laches when they come to the Court to assert their rights after a considerable delay in that

respect. With respect to constitutional law, laches refers to the filing of a writ petition, however, unlike the law on limitations there is no specific time period after which a writ petition is barred. The underlying principle is that the Court should not examine stale cases, because the Court is to help an individual or party that is vigilant and not indolent. The reasons for delay if valid and reasonable are generally accepted because the Court doesn't dismiss petitions only due to delay but only if it is accompanied by other reasons. Thus, in the matter of **Trilok Chand Motichand v. H.B. Munshi,** before the **Hon Apex Court (judgement date 22.11.1968, 1970 AIR 898, five judge bench : Hon Justices – M Hidayatullah, CJ, SM Sikri, RS Bachawat, GK Mitter, KS Hegde)** the main question before the Court was whether there is any period of limitation prescribed within which the remedy under Article 32 is to be invoked. The petition, in this case, was filed after a delay of 10 years; the plea was dismissed for delay. Similarly, the Hon Apex Court in the matter of **Gian Singh Mann v. High Court of Punjab and Haryana, 1980 AIR 1894,** judgement dated 22.08.1980, wherein, the writ petition was filed by the petitioners eleven years after the date from which they claimed promotions.The petitioners argued that during these intervening years they were busy making representations before different authorities regarding their grievances.The Court rejected their contentions stating that there were no valid reasons for justifying the delay of eleven years and

therefore their petitions were dismissed.In the matter of **V. Bhasker Rao v. State of Andhra Pradesh,**th**e Hon Apex Court vide judgement dated 23 March 1993, :1993 AIR 2260** held that the seniority list was published twelve times during eight years showing the petitioner below the respondents but the petitioner never challenged. It was held that he was not entitled to challenge it under Article 32 of the Constitution of India.

(vi) In the matter of **Brijesh Kumar &Ors. Vs. State of Haryana &Ors., [Special Leave Petition (Civil) Nos. 6609-6613 of 2014], it was held as follows by the two-judge bench of the Hon Apex Court comprising Hon Justices Dr BS Chauhan and J. Chelameshwar:**

> *7. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained every day by the Courts. The law of limitation is enshrined in the legal maxim "Interest ReipublicaeUt Sit Finis Litium" (it is for the general welfare that a period be put to litigation). Rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*
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> *8. The Privy Council in General Fire and Life Assurance Corporation Ltd. v. Janmahomed Abdul Rahim, AIR 1941 PC 6, relied upon the writings of Mr. Mitra in Tagore Law Lectures 1932 wherein it has been said that "a law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law."*
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> *9. In P.K. Ramachandran v. State of Kerala &Anr., AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:- "Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so*

prescribes and the Courts have no power to extend the period of limitation on equitable grounds."

10. While considering a similar issue, this court in EshaBhattacharjee v. Raghunathpur Academy &Ors. (2013) 12 SCC 649 laid down various principles inter alia:

" x xx

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact

vi) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play

x xx

ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x xx

xvii) The increasing tendency to perceive delay as a non-serious mater and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

(See also: Basawaraj v. Land Acquisition Officer (2013) 14 SCC 81)

11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

13. In State of Karnataka &Ors. v. S.M. Kotrayya&Ors., (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

14. Same view has been reiterated by this Court in JagdishLal&Ors. v. State of Haryana &Ors., AIR 1997 SC 2366, observing as under:- "Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh's ratios. Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well."

15. In M/s. Rup Diamonds &Ors. v. Union of India &Ors., AIR 1989 SC 674, this Court considered a case where petitioner wanted to get the relief on the basis of the judgment of this Court wherein a particular law had been declared ultra vires. The Court rejected the petition on the ground of delay and laches observing as under:- "There is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they have 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."

16. In the instant case, after considering the facts and circumstances and the reasons for inordinate delay of 10 years 2 months and 29 days, the High Court did not find sufficient grounds to condone the delay.
17. In view of the facts of the case and the above-cited judgments, we do not find any fault with the impugned judgment. The petitions lack merit and are accordingly dismissed....."

(vii) In the matter of **State of Jammu & Kashmir Vs. R.K. Zalpuri and others, [Civil Appeal Nos. 8390-8391 of 2015 @ S.L.P. (C) NOS.11203-11204 of 2014], a two-judge bench comprising Hon Justices DipakMisra and Prafulla C. Pant, vide judgement dated October 08, 2015, Hon DipakMisra, J. has held that:**

".....7. Being grieved by the aforesaid decision, the State Government preferred Letters Patent Appeal No.102 of 2012. In the grounds of the Letters Patent Appeal, the State had clearly asserted:- "That the learned Single Judge, with great respects, has not appreciated the specific and important averment made by the appellants that the respondent had slept over the matter for quite seven years and has knocked the door of the Hon'ble Court after a gap of seven years, thus there was clear unexplained huge delay and laches in filing the writ petition, the same was liable to be dismissed, however, the learned Single Judge without returning any finding on this vital issue

has allowed the writ petition, therefore, the same is liable to be set aside on this ground along."

8. The Division Bench that heard the Letters Patent Appeal recorded a singular submission on behalf of the learned counsel for the State which was to the effect that it had been left without any remedy to proceed against the delinquent government servant and, therefore, the order passed by the Learned Single Judge needed modification. The Division Bench dealing with the said submission opined thus:-
"Learned Single Judge has quashed Respondent's dismissal from Government service on the ground that copy of the proceedings prepared under Rule 33 was not supplied to the Respondent before passing final orders on the provisional conclusion reached at on the basis of the inquiry to show cause as to why the proposed penalty be not imposed on him. Although the Appellants' dismissal was set aside by the Court finding non- compliance of the provisions of the Rule 34 of the Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956, yet it cannot be said that the Appellants have been left without any remedy to proceed against the delinquent employee on complying with the requirement of Rule 34.

15. We have noted that the High Court has rejected the application for review on the ground that it cannot sit in appeal and the parameters of review are not attracted. In this context, we may refer to the Constitution Bench judgment in Shivdeo Singh and Others vs. State of Punjab and Others[2], wherein it has been observed that nothing in Article 226 of the Constitution precludes a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave palpable errors committed by it.
16. In this regard, reference to AribamTuleshwar Sharma vs. AribamPishak Sharma and Others[3], would also be apt. In the said case, it has been held thus:- "It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review.

The power of review may be exercised to the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate Court to correct all manner or errors committed by the subordinate Court."

17. In M/s. Thungabhadra Industries Ltd. vs. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes[4], this Court while discussing about the concept of review, has ruled that:- "a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out".

18. Almost fifty-five years back, in Satyanarayan LaxminarayanHegde vs. MallikarjunBhavanappaTirumale [5], it was laid down that:- "an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments and such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ".

19. We have referred to the aforesaid authorities as we are of the convinced opinion that in the present case, there was a manifest error by the High Court, for it had really not taken note of the stand and stance that was eloquently put by the State as regards the delay and laches. The averments in the writ petition were absolutely silent and nothing had been spelt out why the delay had occurred. The Single Judge, as stated earlier had chosen not to address the said issue. The Division Bench in appeal addressed the submission, totally being oblivious of the ground pertaining to delay and laches clearly stated in the memorandum of appeal, and modified the order passed by the Learned Single Judge as if that was the sole submission.

It needs no special emphasis to state that in the obtaining factual matrix, the application for review did not require delving deep into the factual matrix to find out the error. It was not an exercise of an appellate jurisdiction as is understood in law. It can be stated with certitude that it was a palpable error, for the principal stand of the State was not addressed to and definitely it had immense significance and hence, the same deserved to be addressed to. Therefore, we are compelled to think that the order required review for the purpose of consideration of the impact of delay and laches in preferring the writ petition. Be that as it may, we shall proceed to deal with the repercussions of delay and laches, as we are of the considered opinion that the same deserves to be addressed to in the present case.

20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation vs. DosuAardeshirBhiwandiwala and Others[6], wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:- "The Court while exercising its jurisdiction under Article 226 is duty- bound to consider whether: adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved; the petition reveals all material facts; the petitioner has any alternative or effective remedy for the resolution of the dispute; person invoking the jurisdiction is guilty of unexplained delay and laches; ex facie barred by any laws of limitation; grant of relief is against public policy or barred by any valid law; and host of other factors."

21. In this regard reference to a passage from Karnataka Power Corpn. Ltd Through its Chairman & Managing Director &Anr Vs. K. Thangappan and Anr[7] would be apposite:- "Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party". After so stating the Court after referring to the authority in State of M.P. v. NandalalJaiswal[8] restated the principle articulated in earlier pronouncements, which is to the following effect:- "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".

22. In State of Maharashtra V Digambar[9] a three-judge bench laid down that:- "19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal

right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."

23. Recently in Chennai Metropolitan Water Supply and Sewerage Board &Ors. Vs. T.T. MuraliBabu[10], it has been ruled thus: "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".

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of writ court to exercise the discretion. In Tukaram Kana Joshi And Ors. Vs. Maharashtra Industrial Development Corporation &Ors[11] it has been ruled that:- "Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved.

Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience". And again:- "No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned.

In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide DurgaPrashad v. Chief Controller of Imports and Exports[12], Collector (LA) v. Katiji[13], DehriRohtas Light Railway Co. Ltd. v. District Board, Bhojpur[14], Dayal Singh v. Union of India[15] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar[16].)"

25. Be it stated, in the said case the appellants were deprived of the legitimate dues for decades and the Maharashtra Industrial Development Corporation had handed over the possession of the property belonging to the appellant to the City Industrial Development Corporation of Maharashtra without any kind of acquisition and grant of compensation. This court granted relief reversing the decision of the High Court which had dismissed the writ petition on the ground of delay and non-availability of certain documents. Therefore, it is clear that the principle of delay and laches would not affect the grant of relief in all types of cases.

26. In the case at hand, the employee was dismissed from service in the year 1999, but he chose not to avail any departmental remedy. He woke up from his slumber to knock at the doors of the High Court after a lapse of five years. The staleness of the claim remained stale and it could not have been allowed to rise like a phoenix by the writ court.

27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim "Deogratias" - 'thanks to God'.

28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, need less to emphasise, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present.

29. In view of our aforesaid analysis the appeals are allowed and the judgment and orders passed by the High Court are set aside. There shall be no order as to costs."

Cases cited: [1] AIR 1994 SC 1074, [2] AIR 1963 SC 1909, [3] (1979) 4 SCC 389, [4] AIR 1964 SC 1372, [5] AIR 1960 SC 137, [6] (2009) 1 SCC 168, [7] (2006) 4 SCC 322, [8] (1986) 4 SCC 566, [9] (1995) 4 SCC 683, [10] (2014) 4 SCC 108, [11] (2013) 1 SCC 353, [12] (1969) 1 SCC 185, [13] (1987) 2 SCC 107, [14] (1992) 2 SCC 598, [15] (2003) 2 SCC 593, [16] (2011) 5 SCC 607

11. When we now look at the facts of the case in the harsh yet justifiable sunlight of the above law and citations, we find that that there is no justifiable explanation at all for the delay since 2012 right up to the date of filing of the OA before this Tribunal in the year 2019 except the bald statement that the applicant has been approaching and representing the authorities against the actions taken against him. The only fig leaf cover for the delay is that the applicant was pursuing the matter with the Chairman Railway Board with regards to his Mercy petition which too was filed in 2013 and thereafter with the Minister Railways and so on. In fact, there is not a shred of material which would persuade us to consider the delay condonation of more than 07 years which is better part of a decade. The fact of the matter is that the applicant has been sleeping all along and it is no longer res integra that one who sleeps looses. The citations by the ld respondent counsel only add to this law laid down by the Hon Apex Court in a catena of judgements.

12. The *summum bonnum* of the above analysis is that the we have to bear in mind that in matters of delay we have to have adequate proof of the justifiable reasons for delay and if a person, without adequate reason, approaches the court at

his/her own leisure or pleasure, the court would be under no legal obligation to accept the lis at a belated stage. 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 that, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis".

13. Thus we find that the applicant having come to this Tribunal after a delay of more than seven years without any justifiable explanation,has to be held accountable for the sameunder the law of the land. ***Vigilantibus Non Dormientibus Jura Subvenit*:**"Equity aids the vigilant, not the sleeping ones, that is, those who sleep on their rights".Accordingly, there is no evidence before us to convince us of any ground with respect to condoning the delay in filing of the original application before this Tribunal. In the event that **MA No. 2109/2019 in Dy. No. 3408/2019** is liable to be dismissed and is dismissed. Nothing remains to be done in the application Dy No 3408 of 2019 which stands disposed accordingly.

14. No costs

(**Devendra Chaudhry)**
Member-A

(Justice Vijay Lakshmi)
Member-J

/M.M/