Reserved on: 04.02.2021

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. 586 of 2020
In
O.A. No. 290 of 2020

Bhola Prasad Yadav aged about 71 years, S/o Late Shri Ram Naresh Yadav, retired. A.S.P.O. Rasara, Ballia Division, R/o Imilia Shastri Nagar (Behind Fatima Hospital), Mau Nath Bhanjan, District Mau-275101.

Applicant

By Advocate: Shri S.K. Kushwaha

Vs.

1. Union of India through Secretary, Ministry of Communication and I.T. Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.

2. Director General of Posts, Postal Directorate, Dak Bhawan, Sansad Marg, New Delhi representing Hon'ble President of India.

3. Chief Post Master General, U.P. Circle, Lucknow.

4. Secretary, Union Public Service Commission, Dholpur House, Shahjahanpur Road, New Delhi.

5. Senior Superintendent of Post Offices, Azamgarh Division, Azamgarh.

Respondents

By Advocate: Shri A.K. Sinha

O R D E R

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

By the instant original application, applicant has prayed for (i)quashing the charge sheet dated 03.10.2007, (ii) the impugned enquiry report communicated through letter dated 08.05.2012, (iii) impugned advice of UPSC dated 13.01.2014

and (iv) the impugned final punishment order dated 03.03.2014 with further prayer seeking directions to the respondents to give all consequential benefits off pay, salary pension along with 18% interest.

2. The applicant has also filed a delay condonation application MA No. 586 of 2020 vide 27.07.2020 as the relief being sought pertains to more than 06-13 years through the O.A.which has been filed only on 01.07.2020. Thelearned respondents counsel has at the outset raised objection with respect to delay condonation application and has submitted that the delay condonation application be decided firstly in the interest of justice, as the relief being sought pertains to quashing of chargesheet of the year 2007 which is 13 years old as also the impugned punishment order of 2014 which is more than 06 years old.

3. Based on facts asserted during the preliminary hearings we find that, there is indeed need to decide on the delay condonation application before going into the merits of the case. Accordingly, we have heard the ld. counsel for both the parties at length on the issue of delay condonation in filing the OA. 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 Charge sheet was served against the applicant vide 03.10.2007 wherein the charges concerned working of the applicant as Complaints Inspector Varanasi West Divisionin the period 1998 to 2000 wherein it is stated that the applicant while carrying out an inspection of Varanasi Telibagh Sub-Postoffice failed to verify the credit-related information of KVPs issued on various dates in the period 1998 to 1999 with the help of KVP stock register;that he did not verify the purchase applications, ensure verification of unsold stock of cash certificates, and balance certificates in the issue journal etc. That this resulted in non-detection of non-credit of sale proceeds of the KVPs whichin turn led to a massive fraud being committed. An enquiry was accordingly held based on the aforesaid and a chargesheet was issued. The consequential enquiry process involving consultation with UPSC, etc., led to an order for recovery of the misappropriated amount concerning the KVPs vide order dated 03.03.2014 (2014 order). While seeking quashing of the chargesheet and the consequential 2014 punishment order, the applicant has asserted that there has been no delay as the applicant came to know of the punishment order of 2014 only when therespondents have started recovery from the pension of

the applicant from the month of November 2019 and so filed the OA in good time on 01.07.2020. That hence there has been no delay on part of the applicant and therefore the delay condonation application should be accepted.

6. *Per Contra* respondents have submitted through the CA/SCA documents that the applicant has made unacceptable assertion of not having knowledge of the final punishment order issued vide 03.03.2014 as he has admittedly participated in the entire disciplinary proceedings which were initiated in 2007 with the issue of the charge sheet dated 03.10.2007 right uptill the stage of final punishment order of 03.03.2014. It is asserted that it does not lie in the mouth of the applicant to feign lack of knowledge of the 2014 order when the order has also been received by him as is evident by the receipt dated 27.03.2014 filed along with letter dated 18.12.2019 (SCA-1). It is also stated that the applicant has mislead the court and in fact, in connivance of local officials evaded deduction in pension for the last more than five years. Hence there is no reason to accept the bald statement of the applicant that he had no knowledge of the impugned punishment order of 2014 more than six years prior to filing of the O.A. and hence there is no justification to the delay condonation application which therefore deserves to be trashed and dismissed.

7. We have heard the counsel for both the parties at length

and perused the records available including all the pleadings such as counter, supplementary counter, rejoinder supplementary affidavit, etc., with care and diligence.

8. At the outset it is to be noted that it is to be noted that the applicant cannot deny that the chargesheet which is also impugned in the instant O.A. was issued in 2007 and he did prefer the consequential replies etc., and thereby undeniably participated in the process. Therefore, to impugn the same after more than 13 years of a disciplinary proceed process step is nothing but gross delay of the highest level.The next point is that the applicant retired on 31.05.2009 during the process of inquiry which was continued with competent approval of the President under the Rule 14 of the CCS (CCA) Rules, resulting in the final punishment order of 2014. That the applicant participated in the entire process at every stepis evident from the letters filed by the applicant himself as Annexures A-6 {dated 03.06.2012} and A-7 {12.02.204 - written by him just immediately before the passing of the punishment order dated 03.03.2014} whose language is relevant to be perused and so the concerned extracts of the orderare reproduced below:

"No. C-14016/111/2012-VP
Government of India
Ministry of Communication & IT
Department of Posts.

Dak Bhawan, Sansad Marg
New Delhi-110 001
Dated: 3-3-2014

ORDER

Shri B.P. Yadav was proceeded against under Rule 14 of the CCS (CCA) Rules, 1965 by the CPMG, U.P. Circle, Lucknow vide Memo dated 3-1-2007 on the following Articles of the charges: -

Article-I ……

2. Consequent to the retirement of the official on 31.5.2009 A/N on superannuation, the proceedings were continued under Rule 9 of CCS (Pension) Rules, 1972.

3. On denial of charges, IO & PO were appointed to conduct the departmental inquiry. The inquiry was conducted as per the laid down procedures. IO submitted his inquiry report on 2.6.2011 wherein he held the charge in Article I as partially proved, charge in Article II as not proved and charge in Article III as proved. The disciplinary authority having agreed with the findings of the IO has submitted a copy of the inquiry report without disagreement note to the CO vide letter dated 8.5.2012 and the CO was asked to submit his written representation, if any, against the IO's report within 15 days of receipt of the letter.

4. ***The CO submitted his written representation on 5.6.2012 against the inquiry report and pleaded himself not guilty. The CO raised various issues in his written representation. The issues raised by the CO in his written representation have been considered by the disciplinary authority and found to have not merits. (emphasis supplied)***

5. The disciplinary authority concluded that the irregularity committed by the CO is very serious, hence, he deserves severe punishment under Rule 9 ibid. The case was submitted by the CPMG, UP Circle, Lucknow to this office for passing Presidential order.

6. The case was placed before the President who was of the tentative view that the misconduct on the part of the CO is grave enough to justify action under Rule 9 of the CCS, (Pension) Rules, 1972 for awarding penalty in the shape of suitable cut in the pension and gratuity. The case was, therefore, referred to UPSC for seeking their advice by this office vide letter dated 9.9.2013. The UPSC tendered their advice vide letter dated 13.1.2014.

7. The Commission after taking into consideration all aspects relevant to the case is of the view that the charge established against the CO, constitute grave misconduct on his part and considered that the ends of justice would be met in this case if the penalty of "withholding of 30% (thirty percent) of the monthly pension otherwise admissible to Shri B.P. Yadav, the CO is imposed on him for a period of five years". The gratuity may be released, if not required otherwise.

8. On receipt of the advice of the Commission, the same along with a copy of the inquiry report dated 2.6.2011 have been sent to Shri B.P. Yadav vide letter dated 22.1.2014 and he was asked to submit his written representation, if any, on the above to this office within 15 days of receipt of the letter.

9. ***The CO submitted his written representation dated 12.2.2014 which was received in this office on 17.2.2014. He again raised the same issues which were earlier raised by him and already considered by the UPSC. (emphasis supplied)***

10. The advice of the UPSC, the written representation of the CO along with relevant records of the case have been placed before the President for consideration. On such consideration, it has been concluded after applying mind judiciously that the advice of the Commission is found to be correct and may be accepted.

11. The President after careful consideration of the advice of the Commission, all facts, circumstances and relevant records of the case has accepted the advice of the Commission. The President has, therefore, ordered accordingly.

By order and in the name of the President.

(V. Santhanaraman)
Director (VP & DF)

Shri B.P. Yadav
Retired ASPO's Rasara
(Through the Chief Postmaster General, U.P. Circle, Lucknow-226001)"

Thus, it may be seen from abovethatthe applicant retired on 31.05.2009 and the proceedings continued in full knowledge of the applicant inasmuch that the enquiry report finalized in the

year 2011 was made available to the applicant and the applicant has not represented against the same as per prescribed procedure. It is further clear from para 9 of the 2014 order above, that following the UPSC advice of 13.01.2014, the applicant even submitted a written representation dated 12.02.2014 which was received in the respondent's office on 17.02.2014 in which the applicant is purported to have again raised the same issues which were earlier raised by him and already considered by the UPSC.It is also to be noted that the punishment order is marked to the applicant as in a retired status and so the same has been addressed as Shri B.P. Yadav, Retired ASPO's Rasara, (Through the Chief Postmaster General, U.P. Circle, Lucknow-226001) implying thereby that respondents took adequate care to ensure that the applicant received the punishment order at his retired address location properly.

9. Now we may advert to the proof that the applicant has indeed received the punishment order of 03.03.2014. For this purpose, it would be well that we examine the relevant paras of the SCA filed by the respondents whose concerned abstracts are reproduced below:

> *6. That, the contents of paragraph no. 4 of the supplementary affidavit are not admitted. It is wrong to say by the applicant that he was not in receipt of the punishment order dated 03.03.2014. It is submitted that the applicant received the punishment order no. (Annexure A-4 to the compilation no. I of the O.A.) C-14016/111/2012-VP dated 03.03.2014 on 27.03.2014 vide letter no. RPG/Vig./M-22/Rule-9 Pending/2010 dated 18.12.2019 addressed to Senior Superintendent of Post Offices, Azamgarh Division. There is clear indication in*

para 2 of the letter that the applicant received the punishment order on 27.03.2014 from Superintendent of Post Offices, Ballia Division, Ballia.

7. That the contents of paragraph no. 5 of the supplementary affidavit are not admitted. There is clear indication in para 2 of the letter dated 18.12.2019 that the applicant received the punishment order on 27.03.2014 from Superintendent of Post Offices Ballia Division, the applicant concealed the fact and submitted wrong information before the Hon'ble Court to gain the benefit of the O.A. In this way he played mischief before the Hon'ble court for which the Hon'ble court is requested that the applicant may be dealt with suitably. This is annexed and marked as Annexure SCA-1. This important to note that the applicant received the punishment order no. C-14016/111/VP-2012 dated 3.3.2014 under his dated signature on 27.03.2014 i.e. about six years ago and he is concealing the fact even today. On receipt of the punishment order it was his moral duty to disclose the fact before the pension disbursing authority when he approached Mau R.S. Sub Post Office for receiving pension on 1.4.2014 and onwards. He concealed the fact and kept on receiving full pension. The receipted copy of the punishment order is annexed and marked as Annexure SCA-2. This is also important to note that the copy of punishment order was only indorsed to the applicant for its delivery through Chief Post Master General Uttar Pradesh Circle Lucknow which was sent to the Superintendent of Post Offices, Ballia Division, Ballia for its delivery to the applicant and the Superintendent of Post Offices Ballia Division, Ballia delivered the punishment order to the applicant as evident from Annexure A-4 to the compilation No. 1 of the O.A. as well as from Annexure SCA-1. It is further submitted that the matter came in light through Postmaster General Gorakhpur Region Gorakhpur letter no. RPG/Vig./M-22/Rule-9 Pending/2010 dated 18.12.2019 as evident from annexure SCA-1. The recovery of Rs.10,000/- per month has been effective from the month of December 2019 paid January 2020 onwards and not from November 2019 paid December 2019. Thus, it is fully evident that the applicant concealed the fact and kept on receiving full pension instead of 30% reduction from 3.3.2014 to 2.3.2019 and took excess pension amounting to Rs.492695/- as per calculation sheet received from Postmaster Mau Head Post Office which is annexed and marked as annexure SCA-3. In addition to this it is further submitted that when the applicant received the punishment order on 27.3.2014, he should have made protest before the Hon'be Court within one year from the date of punishment order i.e. up to 2.3.2015. Therefore, the OA filed by the applicant at this stage is highly time barred and liable to be dismissed with heavy cost. ***(Pages 122 to 124 SCA)***

<u>Page 132 SCA</u>

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mijkDr fo"k;d ekey e ifje.Myh; dk;ky;] y[kuÅ dk i= ikIr gvk g ft le lfpr fd;k x;k g fd Jh ch0ih0;kno] lokfuoRr lgk;d v/kh{kd Mkd?kj] jlMk cfy;k e.My fo:) dUnh; flfoy lok, i"ku fu;ekoyh] 1972 d fu;e&9 d vUrxr Mkd fun"kky; ub fnYyh d Kkiu l0 C-14016/111/2012-VP fnukd 03-03-2014 }kjk Withholding 30% of the monthly pension for a period of dk n.M fn;k x;k Fkk] tk vHkh rd iHkkoh ugh fd;k x;k gA tcfd Jh ch0ih0;kno] lokfuoRr lgk;d v/kh{kd Mkd?kj] jlMk cfy;k e.My }kjk viuk i"ku eÅukFk Hktu i/kku Mkd?kj l fcuk fdlh dVkrh fd, ikIr fd;k tk jgk gA

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It would be further most critically important to peruse carefully the **photocopy of the punishment order receipt by the applicant vide 27.03.2014 (SCA-1: Annexure to letter dated 18.12.2019)** and note that the applicant undeniably received the said punishment order. The relevant abstracts of the receipt are reproduced below:

"Received RO Gorakhpur ...RPG/...M-22/DP/20 dated. 24.3.2014 along with DG (P) Letter No C-14016/III/2012-VP dated 03.03.2014 on 27.3.2014 from ...(Ballia)
(B.P.Yadav)
Mohalla – Shashtrinagar
Maunath Bhanjan
Distt-Mau (U.P.)
dated 27.3.2014.."

Thus, we can clearly see that the applicant did receive the punishment order as per above on 27.03.2014 and so cannot deny that he had no knowledge of the same w.r.t coming before the Tribunal for relief. In fact, the belated discovery of the fraud

being played in non-recovery of the amounts as contained in the punishment order led to the recovery being started belatedly in 2019 and the applicant is now before us pleading in a perhaps perverse manner that he had no knowledge of the punishment order as the recovery has started only in 2019 and so there is no delay in coming to the court for relief. In fact, the last nail in the born dead argument is driven by the letter of the applicant dated 13.05.2020 in which he has achieved a self-goal by stating in the letter that the applicant considered the 03.03.2014 order as non-speaking and non-reasonable and so did not deem it fit to reply the same. Relevant abstracts are reproduced below:

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tkp dk;okgh dh lkjh vkipkfjdrk, ijh gk tku d ckn lkjk ekeyk] vfxe vkn"kk gr Mkd egkfun"kky;] ub fnYyh dk Hktk x;k A Mkd egkfun"kky; ub fnYyh d mijkDr lUnfHkr i= d }kjk bl ekey dk fuLrkfjr fd;k x;kA

bl ekey dk fuLrkfjr djr le; fdlh Hkh idkj d Li'V vkn"k ugh fd; x; D;kfd mijkDr lUnfHkr fuLrkfjr Kkiu viu vki e mnklhu Fkk ,o ikFkh d fo:) dkb Li"V vkn"k ugh Fk blfy, ikFkh u mDr Kkiu dh o?krk dk pukrh ugh nh vFkkr bl Kkiu d fo:) viuk dkb ifronu ugh Hktuk u gh viuh dkb ifrfd;k gh 0;Dr dh A*{Emphasis supplied}*

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vr% ikFkh dh ikFkuk g fd mijkDr rF;k dk /;ku e j[kr g, ikFkh d bl ifronu ij lgkuHkfriod fopkj djr g,] ikFkh d i"ku l dh tk jgh dVkrh ij rjUr jkd yxok nh tk; vkj dh x;h dVkrh dk dl;k okil fnyoku dh dik dju dh egrh vudEik djA

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fnukd 13-05-2020 Hkonh;

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10. As against above, there is no proof given by the applicant that he simply did not receive this order except his baseless denial. He has no shred of believable evidence that the said receipt of the punishment order reproduced above is false or concocted / forged / falsified by the respondents. In any case the self-admission adds injury to the face of truth so much so that in light of the submissions of the ld Respondent counsel in paras 5 to 7 of his SCA, we cannot fail to see perhaps that it is actually quite bizarre in the least, that perhaps a double fraud is being played wherein first of all the execution of the punishment order was not brought into play in 2014 and then once when the fraud of non-recovery from pension of the applicant was unearthed in 2019, then the applicant rose to defend himself against the recovery in the O.A. of 2020 pleading knowledge only as from 2019. We are constrained to observe that this level of possible fraud and connivance does not bode well for the Department as a whole and speaks volumes of its manner of governance. We stop short of castigating the entire system for its impurity in honest compliance of important

orders and the constant game of obfuscation and denial in play at various levels. The Secretary in the Department of Posts in the Union of India deserves to be served a copy of this order for appropriate action in such and God know how many other similar cases need his immediate attention for elaborate examination and which may continue to lie like hidden serpents in the Amazonian jungle of files and papers of the system's Byzantine networks.

11. At this juncture it would be well to analyse the law of the land on delays and laches which would help us decide on the above set of facts.

12. 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

13. 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:

"9. Similarly in Jagdish Lal 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."

10. In Union of India v. C.K. Dharagupta, (1997) 3 SCC 395, it was observed as follows:

"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.

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."

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 Esha Bhattacharjee 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 SatyanarayanLaxminarayanHegde 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. Nandalal Jaiswal[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. Murali Babu[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

14. On the basis of above lens of citations and law when we observe the facts of the case at hand, we find that, there remains nothing further to reflect on the factum of service of the 2014 punishment order and it is clear that the applicant tried to be very wise in not responding to the punishment order and he seems to have had an amnesia that he himself has accepted the factum of receipt in his letter of 13.05.2020 (Annexure A-9 of OA). This is indeed unfortunate, moreso because, now the whole thing is being covered up in a misleading manner in the garb of lack of knowledge of the relevant orders and so seeking refuge of the court in such belated after-thought manner once the misdemeanour has been discovered. Probably there is a trite saying that "one who tells a lie at one place has to do so at several places" and in the process there is a slip and lo and behold the cat of lie gets out of the bag and cannot but reject his explanation of the delay of the last six years till the date of filing of the instant original application. The assertion by the applicant that the impugned punishment order is not a punishment order is not a subject matter for decision in the MA

of delay condonation that we are dealing with presently and so needs no comments.

15. 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 loses. The lis has in fact no legs to stand on any merit qua the reasons for the unexplained delay. The citations by the ld applicant counsel cannot support his contention of explaining the delay in the instant O.A.In fact, the entire concept of delay and laches has been mis-represented by the applicant and sought to be covered up by the quoted citations. We therefore deem it fit to analyse the whole concept of delay and laches to put on record the law on the same in a 360-degree manner.

16. On the basis of above citations and the facts analysed thereto in the earlier paras it is quite clear that the applicant has come to this Tribunal after a delay of more than seven years without any justifiable explanation whatsoever concerning the delay. ***Vigilantibus Non DormientibusJura 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. The delay condonation application is therefore liable to be dismissed and is dismissed. Nothing further needs to be done therefore, in

the instant OA and the other MAs Nos 1117/2021 and 1118/2021 which accordingly stand disposed.

17. No costs

(**Devendra Chaudhry)**
Member-A

(Justice Vijay Lakshmi)
Member-J

/M.M/