

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**RA No.251/2017 In
O.A No.3933/2017**

New Delhi this the 3rd day of January, 2017

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

R.C. Choudhary
S/o Late Narayan Choudhary
R/o F-24/263, Sector-3,
Rohini, Delhi-85
(Applicant retired from Grade T-5
With IARI, Pusa, New Delhi).

....Review Applicant

Versus

1. Indian Council of Agricultural Research,
Through its Secretary/DG,
Krishi Bhawan,
New Delhi-1.
2. The Director,
Indian Agricultural Research Institute,
Pusa,
New Delhi-12.

...Respondents

ORDER BY CIRCULATION

By Mr. V. Ajay Kumar, Member (J)

The applicant, a retired Technical Officer (T-5 Grade), filed OA No.3933/2017 seeking to place him in the pay scale of Rs.425-700 with effect from 18.03.1978 and for consequential reliefs. This Tribunal noticing that the review applicant retired from service on 30.09.2009 and seeking certain benefits for the first time after a lapse of about 39 years and by following the decisions of the Hon'ble Apex Court in **Union of India and Others Vs. K. Durairaj**

(dead) by LR's), **JT 2011 (3) SC 254, D.C.S. Negi Vs. Union of India & Others (Civil Appeal No.7956/2011)** dated 7.3.2011 and **C. Jacob Vs. Director of Geology and Mining and Another, JT 2008 11 SC 280** dismissed the said OA on 10.11.2017 by holding that the claim made in the OA was stale and dead and cannot be entertained after a long lapse of time.

2. Aggrieved by the said order, the review applicant filed the instant review by placing reliance on the decision of the Hon'ble Apex Court in **M.R. Gupta Vs. Union of India and Others 1995 (5) SCC 628** and also by submitting that the decisions referred by this Tribunal while dismissing the OA are not applicable to the facts of the case.

3. In **M.R. Gupta Vs. Union of India (1995) 5 SCC 628**, the Hon'ble Apex Court held as under:-

"2. The only question for decision is : Whether the impugned judgment of the Tribunal dismissing as time barred the application made by the appellant for proper fixation of his pay is contrary to law ? Only a few facts are material for deciding this point.

XXX

XXX

XXX

5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would

arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action”.

4. In view of the submissions made, it is relevant to refer the recent decisions of the Hon’ble Apex Court on the issue of delay in making a claim and its condonation by the Courts.

5. In ***Esha Bhattachargee Vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649.***

After discussing the entire case law on the point of condonation of delay, the Hon’ble Apex Court has culled out certain principles as under:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3. Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

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

21.6. It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

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

21.8. There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. The conduct, behaviour 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.

21.10. If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

22.1. An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters”.

6. In ***Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu (2014) 4 SCC 108***, it

was held by the Hon’ble Apex Court as under:-

“13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others[AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp[(1874) 5 PC 221], which is as follows: -

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

14. In State of Maharashtra v. Digambar[(1995) 4 SCC 683], while dealing with exercise of power of the High Court under

Article 226 of the Constitution, the Court observed that 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.

15. In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc.[AIR 1987 SC 251] the Court observed that:

“it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.”

It has been further stated therein that:

“if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.”

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

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

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold".

7. A careful perusal of the decisions of the Hon'ble Apex Court in **Esha Bhattarchgee** (supra) and **Chennai Matropolitan Water Supply and Sewarage Board and Others** (supra) wherein it was categorically held that the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration and the fundamental principles 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 and with the increasing tendency to perceive delay as a non-serious matter, and lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed off and the court is not expected to give indolent persons who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle', wherein such delay does not deserve any indulgence and on the said ground alone, the courts should have

thrown the petition overboard at the very threshold, it is necessary to examine the conduct of the applicant in the instant OA before expressing a view on condonation of delay. Accordingly, after considering the conduct of the applicant and the facts of the case and keeping in view the above referred dicta of the Hon'ble Apex Court, the OA of the applicant was dismissed.

8. In **Union of India & Others Vs. M.K. Sarkar (2010) 2 SCC 58**, the Hon'ble Apex Court held as under:-

“15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches”.

9. In the facts of the present case and in view of the decisions of the Hon'ble Apex Court as referred above, we do not find any merit in the RA and accordingly the same is dismissed in circulation. No costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh