CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1783/2012

Reserved On:12.12.2017
Pronounced On: 18.12.2017

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Shri Sri Chand
Conductor Badge No.16373
Token No.35282
I.P. Depot,
New Delhi-110002. .. Applicant

(By Advocates: Shri Vinay Sabharwal)

Versus

Delhi Transport Corporation
Head Office: I.P. Depot Complex,
New Delhi Through its Chairman. …Respondents

(By Advocate: Ms. Swati Jain for Ms. Ruchira Gupta)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

The applicant has filed this Original Application (OA) seeking the following reliefs:-

> "(i) To grant the Ist ACP benefit to the applicant with effect from 2002 and 2nd ACP benefit with effect from 2007; and
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> (ii) To grant all other consequential benefits including the arrears of pay and allowances to the applicant:
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> (iii) To declare the adverse entry made in the ACR of the applicant for the for the year 2001 to the illegal; and
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> (iv) To grant such other and further relief as is deemed fit in the circumstances of the case".

2. The facts, in brief, are that applicant joined the respondents department, i.e. Delhi Transport Corporation (DTC) as Conductor in the year 1983. Throughout his career, he performed his duties faithfully and

efficiently. In the year 2001, while he was posted in Vasant Vihar Depot, New Delhi, due to illness of his father, he had taken 24 days leave for which he has submitted timely applications but all the leaves were converted into Leave "Without Pay (WP)". He also submitted that even while filling the ACR form, 10 days Medical Leave had been illegally added in the Leave WP. He has further submitted that as per DTC OM No.Admi-8(i) (ACR/83) dated 2.2.1983 and Circular No.Admi-8(1)(ACR)/86 dated 1.1.1987, the ACR of the applicant should not be adverse. He has also averred that during the period 10 Medical Leaves were due to him, yet his ACR was graded as "Adverse" which should not have been done as he was having 24 days Leave WP. On 25.10.2001, he was transferred to the Sarjojini Nagar Depot and subsequently vide letter dated 27.02.2002, he was given the remarks in his ACR that "Average but irregular". The said remark was given by Vasant Vihar Depot and after enquiry he was informed by the Clerk of that Depot that they had already intimated him not to take excess leave. When he asked the Clerk of that Depot to give the same in writing, he told that there is no need to give the same in writing as the said letter has been issued by mistake and the same will be corrected. He believed on the version of the Clerk and kept quiet.

3. Applicant has further submitted that the Assured Career Progression (ACP) Scheme became operative in the DTC with effect from 12.08.2002. He enquired the department that why he has not been given the benefit of Ist ACP Scheme, to which respondents informed that due to adverse ACR he has not been given the benefit of the Ist ACP Scheme

and the same will be given after 3 years of eligible ACRs. Thereafter, applicant requested the respondents-DTC to give benefit of 2nd ACP Scheme and was informed that there was no adverse effect on the 2nd ACP benefit to the applicant as he is eligible for same after 24 years, i.e., in the year 2007 after clearance of record of 3 years. Ultimately, applicant was given benefit of Ist ACP in the year 2005 and that of 2nd ACP which was given to him was stopped in the year 2007 because of the adverse remarks in his ACR that "Average but irregular". During the period 2007 to 2010, he had been writing to the respondents to prepone the benefits of Ist and 2nd ACP Scheme, but in vain. Further, applicant has submitted that he is entitled to the benefit of Ist ACP from the year 2002 and should have been granted the benefit of 2nd ACP Scheme on completion of 24 years of service, i.e., in the year 2007. However, applicant has not been granted the benefit of 2nd ACP till date despite repeated request and representation. The latest representation given him is dated 03.02.2011.

4. He has further submitted in the amended OA that the benefit of 2nd ACP which was to be given in the year 2007 was subsequently given by the respondents vide order dated 15.02.2010 by applying the modified ACP Scheme, which was introduced by the respondents vide its Circular dated 17.12.2009. As per the said Circular, the DTC Board has resolved to implement the modified ACP Scheme w.e.f. 01.09.2008. Thus, benefit of 2nd ACP Scheme was extended to the applicant w.e.f. 01.09.2008. He has thus prayed that the OA be allowed.

5. Applicant has relied on the following judgments of the Hon'ble Apex Court:-

(i) **U.O.I. Vs. Tarsem Singh (2008) 8 SCC 648**

(ii) **M.R. Gupta Vs. U.O.I. & Others (1995) 5 SCC 628**.

6. The respondents have filed their reply and submitted that DTC is a body created under Section 3 of the Road Transport Corporation Act 1950 read with Delhi Transport Laws (Amendment) Ac, 1971 having perpetual succession and a common seal and by virtue of the provisions of the said Act can sue and be sued in its own name. They have their own regulations and rules which are not inconsistent with the provision of DTC Act. The Rules of the Corporation are operational by virtue of the Delhi Road Transport Laws (Amendment) Act, 1971 vide Section 4 (e) and, therefore, they have the statutory force. The DTC being a Transport Corporation of the Government of NCT of Delhi was established for the sole purpose of facilitating for the transportation, commuting and travelling of the citizens of Delhi. The case of the applicant could not even be considered by the respondent corporation once his driving licence to ply a bus stood cancelled by the competent authority.

7. They have further submitted that as per DRTA (Conditions of Appointment and Service) Regulation, 1952, the applicant cannot avail of leave without prior sanction from the competent authority. The applicant availed leave for 30 days without pay and the adverse remarks in his ACRs are as per the Circular dated 2.2.1983. They have also submitted that during the year 2001 applicant had availed 66 days leave out of which 34 days leave was not granted to him due to exigencies of

work. Moreover, for grant of benefits of MACP or ACP the ACRs of the individual has to be clear and unblemished and as applicant has been granted adverse ACR that is why he was not granted the relief as prayed for. Hence, they have prayed that the OA be dismissed.

8. We have heard the learned counsel for the parties, gone through the pleadings and judgments.

9. The short point involved in this case is whether applicant has been given benefit of Ist ACP and 2nd ACP/MACP with effect from a particular date or not. We may mention that applicant was granted adverse ACR in the year 2001-02. He never challenged the same. However, he was granted Ist ACP in the year 2005 and 2nd MACP with effect from 15.02.2010/01.09.2008. Hence, applicant is praying that he should be granted 2nd ACP with effect from 26.02.2007. We may mention that applicant has never challenged the dates from which the same should have been granted, which to our mind cannot be accepted at this belated stage.

10. 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.
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> XXX XXX XXX
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> 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".

11. In ***Union of India and Others Vs. Tarsem Singh (2008) 8 SCC 648***, the Hon'ble Apex Court held as under:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of

three years prior to the date of filing of the writ petition".

12. Now in view of the submissions made by the learned counsel for the applicant that non grant of Ist ACP in 2005 and 2nd ACP with effect from 26.02.2007 is a continuous cause of action and a civil servant can agitate for the same at any time as per his convenience and sweet will and that the law of limitation has no bearing once the issue involved is non grant of ACPs by placing heavy reliance on **M.R. Gupta**(supra), **Tarsem Singh** (supra) etc., it is to be seen that the abnormal and unexplained delay in the instant OA is to be condoned since the issue involved is the alleged non grant of 2nd ACP w.e.f. 26.02.2007, which is a continuous cause of action month after month whenever the salary is paid and whether the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. In this regard it is necessary to consider some of the recent decisions of the Hon'ble Apex Court on the point of condonation of delay, which are as under:-

(i) 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 Ho'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".

(ii) In ***Chennai Metropolitan Water Supply and Sewarage 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.
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> 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".

13. A careful perusal of the decisions of the Hon'ble Apex Court in **Esha Bhattarchargee** (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..

14. The applicant came to know about his entitlement for 2nd ACP w.e.f. 26.02.2007 but never challenged. Further, the applicant nowhere in the OA tried to explain the abnormal delay of about 7 years. It is also not the case of the applicant that he had been making continuous representations or the respondents have been assuring him of redressing his grievance. Hence, in our view, the applicant does not deserve any indulgence in entertaining the OA. 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".

14A. In the facts of the present case, the claim of the applicant seeking grant of Ist ACP w.e.f. 01.04.2005 and 2nd ACP/MACP w.e.f. 15.02.2010/01.09.2008 for which the applicant made the claim for the first time on 18.04.2012 when he filed the present OA, is a stale and dead claim and cannot be entertained at this long lapse of time.

15. In the circumstances and for the aforesaid reasons, the OA is dismissed. No costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh