

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

This is the 04<sup>th</sup> day of April 2019

Misc. Contempt Petition No.330/00189 of 2018

In

Original Application No. 1387 of 1998

Present:

**HON'BLE Ms AJANTA DAYALAN, MEMBER (A)**

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)**

Ram Autar aged about 54 years, son of Satya Narayan, resident of Ganga Nagar Basharatpur, Post Office Arogya Mandir Gorakhpur.

.....Applicant.

By Advocate: Shri A.S. Chauhan

VERSUS

1. Shri Rajeev Agarwal, General Manager, General Manager Office, North Eastern Railway, Gorakhpur -273012.
2. Shri L.B. Rai, Principal Chief Personal Officer, N.E. Railway, Gorakhpur.
3. Sri B.K. Dwivedi, Divisional Personal Officer, N.E., Railway (Workshop), Gorakhpur.

.....Respondents

By Advocate : Ms. Shruti Malviya

## **ORDER**

BY HON'BLE Mr. Rakesh Sagar Jain, Member (J)

1. The present Contempt application has been filed by petitioner Ram Autar averring therein that he had filed OA No. 1387 of 1998 in this Tribunal which was disposed of vide order dated 12.02.2002 by observing that considering the facts and circumstances, OAs are allowed and are disposed of with the direction to the respondent No.2 i.e. GM NER Gorakhpur to appoint immediately the applicants as Khalasi on the basis of

their empanelment on 22.2.1985 w.e.f. the date their juniors have been appointed. The applicants shall be given seniority as per their merit in panel dated 22.2.1985 and will also be entitled to 50% of pay and allowances from the date of their appointment in 1985. The arrears of wages shall be paid within 4 months from the date of communication of this order.

2. The present contempt application has been filed on 25.09.2018, which is apparently barred by period of limitation. As per Section 20 of Contempt of Courts Act, 1971 the period for initiation any proceeding for contempt is one year. In this regard, Section 20 of Contempt of Courts Act, 1971 reads as under-

*"20. Limitation for actions for contempt- No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed".*

3. However, alongside the contempt application, application has been filed for condoning the delay in filing the contempt application. In the condonation application, the applicant has not very clearly stated his case, but the gist of the reasons given by applicant for delay in filing the contempt application seem to be that against the order of the Tribunal, writ was filed in the Hon'ble High Court which was disposed of vide order dated 19.05.2016 and the applicant was not aware of the connected contempt application No. 72 of 2017 titled Ram Brijesh v/s Union of India. On getting knowledge of the contempt application, he applied for his impleadment in the said contempt but the same was disallowed vide order dated 03.05.2018 with advise to applicant to file separate contempt application.
4. It is also averred in paragraph No. 4 of the condonation application "That the applicant Ram Autar getting unfit certificate through the Medical doctors of railway hospital on dated 24.10.2017 and thereafter applicant very first time aware and acknowledge about his grievances the cause of action has

been arise from the date of unfitness reports on dated 24.10.2017".

5. We have heard and considered the arguments of learned counsel for the parties and gone through the material on record. Objection has been filed by the respondents wherein it has been mentioned that contempt petition is barred by period of limitation and accordingly the same may be dismissed.
6. The record shows that
  - A. OA was allowed vide order dated 12.2.2002.
  - B. The writ against the Tribunal order was dismissed by Hon'ble High Court vide order dated 19.5.2016. The said order does not mention that stay order, if any, had been vacated. Therefore, it seems that there was no stay of the order dated 12.2.2002 passed by the Tribunal.
7. Looking to the aforementioned facts, applicant should have filed the contempt application within one year from the order dated 12.2.2002. Even if, the writ petition was pending in the Hon'ble High Court, the same was dismissed by the Hon'ble High Court vide order dated 19.5.2016 and, therefore, taking an extreme view, the applicant should have filed the contempt petition within one year from 19.5.2016 which was not done by him within the period of limitation.
8. It is apparent that there has been a delay by the applicant in filing the present contempt application which is barred by period of limitation in terms of Section 20 of Contempt of Courts Act, 1971.
9. On the question of delay in filing a matter in the Court, it has been held 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”.*

8. The applicant ought to have filed the contempt application within a reasonable period but he has filed the said application after a long period of time, therefore, the application is clearly hit by delay and laches. Accordingly, we find that there is no good ground to entertain this contempt application No. 189/2018 is highly belated and is dismissed. Notices are discharged.

9. Let the contempt application No. 72/2017 be delinked from the present application and therefore, separate order would be passed in the said contempt petition.

**(Rakesh Sagar Jain)**

Member (J)

**(Ajanta Dayalan)**

Member (A)

Manish/-