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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.427 OF 2024.

Shri John Joseph,
81 years of age, Son of Late Mr. Cheriyan
Joseph r/o H. No. 534, 12-A Spring field,
lake view Colony, Miramar, Panaji-Goa
403001. Petitioner.

Versus

- 1 Union of India, Through the
Secretary, Ministry of Finance,
(Department of Revenue), Jeevan
Deep Building, Sansad Marg New
Delhi-110001
- 2 Central Board of Indirect Taxes and
Customs, Through Under
Secretary(Ad-II) Ministry of Finance,
Jeevan Deep Building, Sansad Marg
New Delhi- 110001
- 3 Directorate of Revenue Intelligence
Mumbai Zonal Unit Through the
Additional Director General, D.R.I.,
U.T.I. Building, New Marine Lines,
Mumbai, Maharashtra - 400020 Respondents.

Mr Shivraj Gaonkar, Advocate along with Mr Prabhav Sirvoicar,
Advocate for the petitioner.

Ms Asha Desai, Advocate along with Ms D. Apte, Advocate for
respondent nos. 2 and 3.

CORAM:

**M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

Date:-

16th December 2024

JUDGMENT (Nivedita P. Mehta, J) :

1. Rule.
2. Rule made returnable forthwith.
3. Heard finally with consent of the parties.
4. The petitioner has preferred the present petition questioning the order dated 29.02.2024 passed by the Central Administrative Tribunal, Mumbai Bench (“Tribunal” for short), in Original Application No. 231/2024 with further ancillary reliefs.

Facts

5. The petitioner was employed as an Appraiser of Customs in the Central Excise and Customs Collectorate (Goa) and subsequently joined the promotional post on 15.03.1993 as Assistant Collector of Customs (Preventive) Ahmedabad, Gujarat. The petitioner was temporarily posted as Assistant Collector at Porbandar by office order dated 16.4.1993. He continued to work at Porbandar up to July 1995. Thereafter he was transferred to Goa Regional Unit of Directorate of Revenue Intelligence. The petitioner expected that he would be promoted as Assistant Commissioner (Senior Time Scale) after a period of four years from 15.3.1993. The petitioner was promoted vide order dated 24.4.2000 by the Government of India and the aforesaid promotion was made with effect from 16.4.1997 and not

from 15.3.1997. The petitioner continued to work till 31.3.2002 i.e. the date of his retirement.

6. The contention of the petitioner is that due to incorrect date of promotion which was noted as 16.4.1997 rather than 15.3.1997, the petitioner missed out one additional increment which was due on 1.3.2002. The petitioner made numerous representations to the respondents Authorities stating therein that his date of promotion should be rectified. However, there was no action taken on behalf of respondents.

7. Hence, the petitioner preferred Original Application bearing no. 231/2024 before the Tribunal challenging the non-consideration of his representation and seeking necessary correction in the date of his promotion from Assistant Commissioner (Junior Time Scale) to Assistant Commissioner (Senior Time Scale) with effect from 15.03.1997, with all consequential benefits.

8. The Respondents filed their reply raising preliminary objection as regards delay and laches. The respondents have further stated that the petitioner has misrepresented before this Court that he has given multiple representations, however, the Tribunal had clearly observed that there was no acknowledgment or proof of delivery, submitted by the petitioner. The respondents further submitted that in spite of the fact that incorrect date of promotion

has been mentioned in order no.50/2000 dated 24.4.2000 which was issued by the Ministry of Finance, Department of Revenue, New Delhi, the petitioner failed to take any steps to redress his grievance in time. The Respondents, say that the petitioner slept over his rights and approached the Court belatedly. This is a stale claim.

Submissions

9. Learned counsel for the petitioner argued, that the respondents' have arbitrarily ignored the representation/s of the petitioner and have failed to correct his date of promotion which according to the petitioner, should have been 15.3.1997 instead of 16.4.1997. It was further submitted, that the respondents have violated Rule 11 of the Central Civil Services (Revised Pay) Rules, 1960 ("CCS Rules" for short) which was applicable to the petitioner during the relevant time. Under the said Rule the next increment of the Government servant whose pay has been fixed in the revised scale was to be granted on the date he would have drawn his increment in the existing scale. Learned Counsel highlighted that the Respondents by not granting benefit of the pension which he seeks entitlement to by correcting the date of his promotion from 16.4.1997 to 15.3.1997, violates petitioner's fundamental right under Articles 14, 21 and Article 300A of the Constitution of India. It is the contention of the learned counsel that admittedly the petitioner approached the Court belatedly, still Tribunal, should have entertained the O.A.

no.231/2024, on merits without going into the issue of delay and laches. Learned counsel drew our attention to a judgment of this Court in ***Dr. Manindra Nath Pal Vs State of Goa through the Secretary Finance and others, 2022 SCC Online 7053*** in support of his submissions.

10. On the other hand, learned counsel for the respondents urged that the petition was hit by gross delay and laches and is liable to be dismissed on the ground that the petitioner has raised the claim almost after 21 years. Learned counsel for the respondents submitted, that it is incorrect on the part of the petitioner to allege that the respondents have erroneously considered his date of promotion to be 16.4.1997; whereas actual date of promotion as per order should have been 15.3.1997. It is further argued by the counsel for respondents that the petitioner retired on 31.3.2002 and when the petitioner was in service, he failed to raise any issue about the actual date of promotion till his alleged representation dated 17.9.2021. Therefore, the claim of the petitioner regarding violation of Rule 11 of CCS Rules is baseless. She further submitted that the Tribunal while dismissing the O. A. No. 231/2024 has made cogent observations in paragraph 6 of the order which she heavily relied upon.

11. Learned counsel for the respondents has also submitted that the petitioner's claim that he had made numerous representations to the respondents' is unfounded as there are no acknowledgment/

delivery receipt submitted/presented by the Petitioner. It is submitted that the petitioner had knowledge of the claim but did not assert his right for a period of more than 21 years, post the issuance of his promotion order dated 24.04.2000. In these circumstances, learned counsel for the respondents submits that no interference is warranted in the order passed by the Tribunal. Learned counsel for the respondents further submits that judgment relied upon by the petitioner in the case of **Dr Manindra Nath Pal** (supra) would not be applicable to the facts of the present case.

Analysis and Conclusion

12. We have given our deliberation to the facts and submissions advanced by the parties. It is settled principle of law that a litigant who approaches the Court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from deep slumber ought not to be granted the relief, as delay defeats equity.

13. In the case of **Chennai Metropolitan Water Supply & Sewerage Board and others Vs. T.T. Murali Bau, (2006) 4 SCC 322** paragraph 16 reads 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.”

14. Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [(1874) 5 PC 221:22 WR 492] (PC at p. 239) was approved by this Court in **Moon Mills Ltd. v. M.R. Meher [AIR 1967 SC 1450]** and **Maharashtra SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808 : AIR 1969 SC 329]**. Sir Barnes had stated:

“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 limitation, 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 it relates to the remedy.”

15. Admittedly, the petitioner’s claim regarding correction of his date of promotion from 16.4.1997 to 15.3.1997 accrued when the promotion order was issued to the petitioner on 24.4.2000. Not only this, it would be pertinent to mention here that the petitioner continued in service till 31.3.2002, the date on which he stood retired. Till the year 2024, the petitioner failed to exercise his rights nor did he avail any other mode of redressal to get his date of

promotion corrected. Petitioner submits that he has made various representations to the respondents'; but mere representations does not extend the period of limitation and the aggrieved person has to approach the Court expeditiously within reasonable time. Reliance of the petitioner regarding violation of Rule 11 of CCS Rules will not come into play as the said correction should have been sought by the petitioner at the right time. The petitioner failed to raise any issue till filing of the O.A. No. 231/2024 before the Tribunal. In this regard the Tribunal by informed decision, the relevant portion of which is reproduced below has correctly observed as under:-

“the cause of action, if any, in favour of the applicant had arisen on 16th April, 1997 when he was promoted as Assistant Commissioner (Senior Time Scale). At that point of time, the applicant ought to have agitated his claim for promotion in the senior time scale w.e.f. 15th March, 1997. Having failed to do so at that stage, he cannot be permitted to do so now, as the cause of action does not survive and in fact has extinguished with the passage of time. The present OA also seems to be luxury litigation. The applicant having retired in 2002 and post retirement also having completed more than 2 decades has filed this OA, taking a chance that he may get one additional increment, after antedating of his promotion of 1997. Under no canons of service jurisprudence, can such belated stale claim be entertained.”

16. The stand of the petitioner that the claim of the petitioner is in the nature of a continuous cause of action, hence the question of delay and laches will not be attracted; does not appeal to us. Quite to the contrary, the relief sought is the correction of the date of promotion from 16.4.1997 to 15.3.1997 only with an intention that petitioner would get one additional increment after antedating his promotion of 1997. The Petitioner for more than 21 years has failed to take any recourse provided under the law and therefore, the claim is not only belated but is barred by principle of delay and laches. Hence, the order passed by the Tribunal in O.A. No.231/2024 vide order dated 29.2.2024 cannot be faulted and does not warrant any interference in the exercise of the extraordinary writ jurisdiction of this Court. Reliance placed by the counsel for petitioner on **Dr. Manindra Nath Pal** (supra) is also misplaced as the petitioner in the said case had knocked the doors of the Court at the appropriate time and also continued with various litigation's thereafter. That is not the case in the present matter. The petitioner failed to approach the Court to affirm his rights promptly and within a reasonable period.

17. Hence, we are of the considered view that the order dated 29.02.2024 of the Tribunal needs to be upheld and no interference is warranted in view of the discussion supra. Petition is liable to be dismissed.

18. Rule stands discharged.
19. Petition stands disposed of accordingly. No costs.

NIVEDITA P. MEHTA,J.

M. S. KARNIK, J.