

**IN THE ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**TA/473/09
(Writ Petition (C) no. 2149/2004)**

**EX HAV BIRBAL(NO.11078048 N)
HOUSE NO.65, M.C.D.COLONY
SAMEYPUK BADLI
DELHI-110 042.**

THROUGH : CAPTAIN R.S.DHULL, ADVOCATE

...PETITIONER

VERSUS

- 1. SECRETARY, MINISTRY OF DEFENCE
SOUTH BLOCK
CENTRAL SECRETARIAT
NEW DELHI.**
- 2. CHIEF OF THE ARMY STAFF
SOUTH BLOCK
NEW DELHI.**
- 3. THE RECORD OFFICER
ARTILLERY CENTRE
NASIK (MAHARASHTRA)**

THROUGH : CAPTAIN GOURAV VERMA

...RESPONDENTS

CORAM :

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. M.L.NAIDU, MEMBER**

J U D G M E N T
DATE : 23.02.2010

1. This petition has been brought for quashing the Summary Court Martial proceedings (SCM) held on 11.08.1982 wherein the petitioner was held guilty for offences u/s.39 (b) of the Army Act, 1950 for over staying casual leave granted to him and sentencing him to reduction in rank and as a consequence of which dismissal from service. As against that order, the petitioner made representation on 16.03.1984 for furnishing him the copy of the SCM proceedings but in response to that request only on 09.05.1984 unattested copies of the SCM proceedings were furnished to him. He made repeated request vide letters dated 17.05.1987 and 09.08.1987 for furnishing the attested copies of SCM proceedings. Lastly petitioner received attested copies of ten pages of SCM proceedings on 03.09.1987. The petitioner made request on 24.12.1988 again for furnishing him complete set of SCM Proceedings. Thereafter the petitioner made appeal to the respondent no.2 on dated 12.06.1989 for grant of pension and that was rejected on 19.02.1990. Thereafter this petition was brought.

2. From the chequered history of this case it is well ascertainable that he was dismissed from service on 11.08.1982 and after about 1 ½ year for the first time he asked for the copies of SCM proceedings. When unattested copies were made available to him on 09.05.1984 he waited for three years and then sent the reminder for furnishing the attested copies. Thereafter when 10 pages of the attested copies were furnished to him on 03.09.1987 he again waited for about 15 months and then made appeal to respondent no.2 for the grant of pension for the first time on 12.06.1989. His request was basically for grant of pension. The proceedings of the SCM were for the first time challenged by him on 04.02.2004 i.e. after a gap of 22 years. However, the learned counsel for the petitioner submitted that the delay if at all is to be considered strictly it would come to only 14 years.

3. This petition is resisted from the side of respondents with the contentions that because of laches for about 22 years on the part of the petitioner it ought to have been rejected at the admission stage. By his conduct and acquiescence the petition is liable to be dismissed. The petitioner did not challenge his dismissal order for the last 22 years and this would amount to be the acceptance of the same by him. Now he is relying upon the decision given by the Apex court in the case of *Shiv*

Dass Vs. Union of India wherein in the matter of disability pension it was held that:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the court would reject the same or restrict the relief which could be granted a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

4. On such basis it is strenuously argued by the learned counsel for the petitioner that the relief is sought for the grant of pension and inordinate delay for filing of the petition shall not come in the way of disposal of this petition. The serious question that arises for consideration is whether the petitioner, who did not challenge his dismissal order, can be given relief in the light of the subsequent decision given in Shiv Dass (supra). Learned counsel for the respondents has submitted that the said case refers about the disability pension. The pension matter was considered to be of continuing cause of action by the apex Court in the

case of Shiv Dass (supra) and that would not be applicable in the present case of dismissal from service.

5. Suffice it to mention that in *M/s Rup Diamonds and others vs. Union of India and others (AIR 1989 SC 674)*, the Supreme Court had taken into consideration the laches and the acquiescence and held that one who is guilty of such laches should not be granted relief. The appellant's desperate attempt to undue the dismissal order is not amenable to judicial review at this belated stage. It has also been observed that to those who are sitting on the fence relief cannot be granted. It reads as under:

Petitioners are re-agitating claims which they had 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. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this country and the policy of the

government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal."

6. There are laches on the part of the petitioner as the case was filed by him after 22 years. Such delay would disentitle him the reliefs claimed in the petition. The appellant slept over his rights for a long time. The impetus from the case of Shiv Dass (supra) cannot be availed by him because it pertained to pension. Here the main relief is quashing dismissal order, which obviously suffers for the laches on the part of the petitioner. **The petition is, therefore, dismissed on the ground of laches on the part of the petitioner.**

(M.L.NAIDU)
MEMBER

(S.S.KULSHRESTHA)
MEMBER