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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10.09.2025

\+ W.P.(C) 3735/2017
UNION OF INDIA .....Petitioner

Through: Ms. Pratima N. Lakra, CGSC with Ms. Kanchan Shakya, Mr.Chandan Prajapati, Mr.Shailendra Kr. Mishra and Mr. Priyam Sharma, Advs.

versus

N.K. NAGAR .....Respondent

Through: Mr. Prithvi Pal and Mr.Bhupinder Yadav, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the Order dated 04.10.2016 passed by the learned Central Administrative Tribunal, Principle Branch, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No. 4209/2012, titled ***N.K.Nagar v. Union of India***, allowing the O.A. filed by the respondent herein with the following directions:

> *"**22.** In the circumstances and for the aforesaid reasons the impugned Annexure A1-Office Order No.16/2006 -dated 25.01.2006, is quashed and set aside, and the respondents*

shall reinstate the applicant into service within 30 days. However, in the peculiar facts of the case, the applicant is not entitled for counting of the service for the break period and for any back-wages. Further, the amounts, if any, received by the applicant from the respondents consequent to the impugned order, shall be recovered from his monthly salary in equal instalments within a reasonable time after the applicant is reinstated into service. No costs.''

2. The brief background of the facts from which the present petition arises is that the respondent was appointed in the Central Secretariat Services as Assistant on temporary basis on 05.11.1995 and was regularised on 05.12.1997.

3. Having successfully completed the probation period, he was appointed as Section Officer in the cadre of the Ministry of Defence on the basis of a Combined Limited Departmental Examination in the year 2000, and was relieved of his duties from the Ministry of Labour and Employment with effect from 11.04.2002. He was again transferred from the Ministry of Defence to the Ministry of Labour and Employment with effect from 16.12.2002 and was posted in the Office of Chief Labour Commissioner, Central (CLC(C)) with effect from 16.12.2002.

4. Thereafter, he was selected for the post of Protector of Emigrants, Hyderabad, where he worked till 06.09.2005. When he was relieved from the said post, he joined the Ministry of Labour and Employment, Mumbai. He joined the said post on 16.09.2005 and submitted an application for earned leave of 2 weeks with effect from 19.09.2005. He reported back for duty on 14.10.2005 and requested

for extension of his leave up to 13.10.2005.

5. He was issued a Memorandum dated 21.10.2005 seeking explanation for his wilful absence from duty. It is the case of the petitioner that the respondent submitted his resignation dated 20.10.2005, which the petitioner, *vide* letter dated 31.10.2005, refused to process as it was not made under the relevant rules and did not clearly specify the date from which the resignation was to be accepted.

6. The respondent then submitted a letter dated 12.11.2005 by which he prayed that his leave be regularised. In the said letter, he further stated that in case his earlier resignation was found to be not maintainable, as stated in the Memorandum dated 31.10.2005, 'let the same be so' and a lenient view may be taken while considering regularisation of his leave.

7. However, the petitioner by a communication dated 25.01.2006 accepted the resignation of the respondent with effect from 12.11.2005. The respondent did not challenge the said communication and, in fact, by a letter dated 21.03.2006 requested the release of his GPF amount after adjusting the leave salary. The same was released to him.

8. It was only after the expiry of almost 5 years that the respondent again woke up and made representations to the petitioner, including making the application under the Right to Information Act, 2005 (in short, 'RTI Act'). The respondent, thereafter filed the above O.A. in the year 2012.

9. The learned Tribunal, by its Impugned Order, held that the letter dated 20.10.2005, by which the respondent has purportedly tendered

his resignation from service, had not been accepted by the petitioner *vide* letter dated 31.10.2005. The subsequent letter of the respondent dated 12.11.2005 cannot be treated as a letter of resignation as it was an application out of desperation for his leave to be regularised. We quote from the observation of the learned Tribunal as under:-

> *"**15.** A careful examination of the pleadings on record and of the rival contentions, it is clear that other than Annexure A1O letter dated 20.10.2005, which was rejected by the respondents as void abinitio, there is no other resignation letter submitted by the applicant. Further, the Annexure A13 letter dated 12.11.2005 of the applicant cannot be said to be a letter of resignation as no such request was made in the said letter. Hence, whether the action of the respondents in reconsidering the Annexure A1O, resignation letter dated 20.10.2005, which was rejected by themselves as void abinitio, or in considering the Annexure A13 letter dated 12.11.2005 seeking granting of leave as letters of resignation from service made by the applicant, suo moto and unilaterally, is legal, valid and in accordance with law, is the question fell for our consideration."*

10. The learned Tribunal, on the question of delay of the respondent in approaching it, held that once it is found that the acceptance of resignation was illegal and without authority of law, the delay ought to be condoned. We quote the relevant observation of the learned Tribunal as under:-

> *"**21.** In view of the clear illegality in passing the impugned order by the respondents, as held by the Hon'ble Apex Court in **Angad Das** (supra) and in view of the admitted fact situation and the decisions of the Hon'ble Apex Court, referred to hereinbefore, to the effect*

that the rules of limitation are-not meant to destroy the right of the party and that a liberal construction is to be taken so as to advance the justice, the delay is condoned, and accordingly, the MA No.3521/2012 is allowed."

11. The learned counsel for the petitioner submits that in the present case, the respondent had voluntarily tendered his resignation *vide* letter dated 20.10.2005, which was duly accepted by the competent authority *vide* communication dated 25.01.2006 with effect from 12.11.2005. The respondent did not protest against the same and instead sought release of his benefits including GPF. It was only after almost 5 years therefrom, that the respondent challenged the acceptance of his resignation. She submits that the O.A. filed by the respondent was, therefore, barred by limitation as stipulated in Section 21 of the Administrative Tribunals Act, 1985 (in short, 'AT Act'). She submits that the learned Tribunal erred in condoning this delay.

12. She further places reliance on the judgment of the Supreme Court in ***Chairman, State Bank of India and Another v. M.J. James***, (2022) 2 SCC 301 to submit that the respondent having acquiesced the acceptance of the resignation, cannot later be allowed to challenge the same. She submits that the principle of estoppel will bar such a challenge.

13. On the other hand, the learned counsel for the respondent submits that from the communication dated 31.10.2005, it is evident that the petitioner did not consider the letter dated 20.10.2005 of respondent as a valid resignation. The respondent did not submit any other resignation, and the letter dated 12.11.2005 also cannot be

treated as one.

14. He submits that the learned Tribunal, considering the letter dated 12.11.2005, has rightly held that the acceptance of resignation when there was no resignation by the respondent, was illegal and *void-ab-initio*.

15. He submits that it is only in response to the application made under the RTI Act, that the respondent came to know, by a communication dated 12.09.2011, that even the approval of the competent authority was not available with the petitioner in the concerned file. The respondent, thereafter, approached the learned Tribunal, which rightly condoned the delay of the respondent in filing the O.A.. Placing reliance on the judgment of the Supreme Court in ***Commissioner of Customs v. Candid Enterprises***, (2002) 9 SCC 764, he submits that where there is fraud, relief cannot be denied only on account of delay in challenging the same.

16. We have considered the submission made by the learned counsel for the parties.

17. In the present case, though the resignation letter dated 20.10.2005 of the respondent had initially not been accepted by the petitioner, as communicated in its Memorandum dated 31.10.2005, however, later the said resignation seems to have been accepted *vide* Order dated 25.01.2006, with effect from 12.11.2005. The relevance of this date is that on 12.11.2005, the respondent had tendered yet another request wherein he stated that his resignation has been prompted by the administration and he only intended to seek relief in order to attend his wife, who had been suffering from acute depression

and developed suicidal tendency due to her ill-health. He further stated that in case his letter dated 28.10.2005 cannot be accepted as resignation, he would not pursue the same, and it may be let to be so.

18. While the learned Tribunal has rightly held that the above letter dated 12.11.2005 cannot be treated as a resignation of the respondent from service, the fact remains that on acceptance of his resignation by a communication dated 25.01.2006, the respondent never protested against the same. Instead, he accepted the same and even prayed for release of other benefits including his GPF, as is evident from the letter dated 21.03.2006 placed on record. For a period of almost 5 years, there was also a static silence on the part of the respondent, before he again started representing against the acceptance of his resignation and even filed the application under the RTI Act.

19. In the reply to one such application, the petitioner stated that the approval of the competent authority is not available in the file. However, in our opinion, the same cannot be equated to there being no approval of the competent authority at all. It must be remembered that more than 5 years had passed since the acceptance of the resignation of the respondent.

20. Be that as it may, Section 21 of the AT Act provides for a period of limitation for filing an application before the learned Tribunal. The same reads as under:-

> *"**21. Limitation.—***
> *(1) A Tribunal shall not admit an application,—*
> *(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection*

with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

21. In the present case, the learned Tribunal, in its impugned order, has condoned the delay only on the basis that the respondent has a

good case on merits. The question of delay and whether the applicant is able to show sufficient cause for condoning the same, is not to be confused with the merit of the O.A.. The respondent had to show the cause which prevented him from approaching the learned Tribunal, if not immediately on passing of the impugned order accepting his resignation or within the period of limitation, but for a period of 5 years there from. The respondent, having accepted his fate of resignation, could not have been allowed to challenge the same belatedly and beyond the period of limitation. In this regard we may place reliance on the Judgment of Supreme Court in ***U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr.***, (2006) 11 SCC 464, wherein the Supreme Court while analysing the plea of acquiescence in regard to challenging the superannuation of the employees, held as under:

> *"**12.** The statement of law has also been summarised in Halsbury's Laws of England, para 911, p. 395 as follows:*
> *"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:*
> *(i) acquiescence on the claimant's part; and*
> *(ii) any change of position that has occurred on the defendant's part.*
> ***Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and***

delay are most material. Upon these considerations rests the doctrine of laches.*"*

13. *In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter.* ***Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted****. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"*

(*Emphasis Supplied*)

22. The reliance placed by the learned counsel for the respondent on the Judgment in ***Candid Enterprises*** (supra) is misplaced, as no case of fraud on part of the petitioners is made out.

23. For reasons stated hereinabove the Impugned Order cannot be sustained and is accordingly set aside. The petition is allowed.

24. There shall be no order as to cost.

NAVIN CHAWLA, J

MADHU JAIN, J

SEPTEMBER 10, 2025/hd/RM/***VS***