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EX. CAPT. HARISH UPPAL

v.

UNION OF INDIA AND ORS.

MARCH 30, 1994

B

[B.P. JEEVAN REDDY AND B.L. HANSARIA, JJ.]

C

Constitution of India 1950—Article 226—Laches—Order rejecting post-confirmation petition challenged ten years later—Held, petition liable to be dismissed for laches—Impugned order of rejection sent by registered post not received back—Held, order was duly communicated—No interference called for.

D

Practice and Procedure—Writ Petition—Laches—Whether in granting petitioner the relief, whether any other person's rights affected—Held, in determining laches this is not the only consideration that a court will take into account—If parties choose to sleep over their rights and remedies for an inordinately long time, the court may well decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution.

E

Limitation Act, 1963—Policy underlying—Explained.

F

In respect of certain irregularities committed by the petitioner, during military operations at Bangladesh in Decemeber, 1971 a court martial was held at which he was found guilty and was awarded the punishment of dismissal and two years' rigorous imprisonment. While the petitioner was in prison, his advocate sent a post-confirmation petition under s. 164(2) of the Army Act, 1950.

G

While dismissing his writ petition in November, 1985, the Supreme Court directed that the post-confirmation petition may be disposed of and the order communicated to the petitioner if this was not already done. Claiming that he received the rejection order only thereafter, the petitioner challenged the same by way of a writ petition which was dismissed by the High Court *inter alia* on the ground that the petition was highly belated. Against this, the petitioner preferred the present special leave petition.

H

The respondent Union of India contended that the rejection order sent by registered post to the petitioner's advocate in 1973 was not received

back and that while refusing the petitioner's request for an interview with the Chief of Army Staff in 1976 he was informed of the rejection order. A

Dismissing the petition, this Court

HELD : 1. The petitioner is guilty of laches. The order rejecting the post-confirmation petition filed by the petitioner was duly communicated to him. No person would have kept quiet for a period of more than ten years without taking any steps if he had not really received the orders upon his petition. [223-F-G] B

2. That by granting relief to the petitioner no other person's rights are going to be affected is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the sole consideration. [224-A] C

3. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India. [224-A-B] D

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) E
No. 5087 of 1984.

From the Judgment and Order dated 16.3.84 of the Delhi High Court in C.W.P. No. 827 of 1984.

WITH F

C.M.P. No. 34318 of 1985.

Petitioner-in-person.

V.C. Mahajan and Ashok K. Srivastav, for C.V. Subba Rao for the Respondents. G

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Heard the petitioner-in-person in support of this Special Leave Petition. We have also perused the written submission H

A filed by him. We find no substance in the Special Leave Petition.

B The Special Leave Petition is directed against an order of the Division Bench of the Delhi High Court dismissing the petitioner's writ petition summarily on two grounds, viz., (1) that the petitioner had approached the Supreme Court but his petition was dismissed by the Supreme Court on November 27, 1972 reported as *Harish Uppal v. Union of India*, [1973] 3 S.C.C. 319 and (2) that his petition is highly belated. Whatever may be said about the first ground, the second ground given by the High Court is, in our opinion, perfectly justified. It cannot be said that the High Court has exercised its discretion in an arbitrary or illegal manner. A few facts will make it clear.

C The petitioner was commissioned in the Indian Army (Artillery Regiment) in June, 1965. He was in the unit which was sent to Bangladesh in connection with military operations there in December, 1971. In respect of certain irregularities committed by the petitioner, a court martial was held against him at which he was found guilty and he was awarded the punishment of (a) dismissal and (b) two years' rigorous imprisonment. This punishment was imposed after given the petitioner an opportunity of pre-confirmation hearing as provided by Section 164(1) of the Army Act, 1950. The final orders imposing the said punishment were passed on August 14, 1972 and communicated to the petitioner on September 3, 1972.

E While the petitioner was in prison, his advocate sent a post-confirmation petition under Section 164(2) of the Army Act to the Government of India. The petitioner says that he received the Government of India's reply on the said representation only on November 11, 1983 (i.e., about eleven years later), whereas respondents' case is that the order rejecting the said post-confirmation petition was duly communicated to his advocate, Sri Suresh Vohra on September 18, 1973 *vide* letter No. 7(17)/72/D(AG-1) dated 18th September, 1973. It is also stated that the petitioner's elder brother filed writ petition No. 456 of 1972 for issuance of a writ of Habeas Corpus in this court seeking the release of the petitioner. The writ petition was dismissed by this court on November 27, 1972.

G In 1983, the petitioner approached this court by way of another writ petition being Writ Petition No. 12590 of 1983, which was dismissed *in limine* directing the Government of India to communicate its orders upon the petitioner's post-confirmation petition, if not already communicated.

H

The petitioner says that it was only thereafter that he received the orders of the Government upon his post-confirmation petition. He then approached the Delhi High Court by way of Writ Petition No. 827 of 1984 which has been dismissed summarily as stated hereinbefore.

On a perusal of the pleadings of the parties before us, we are satisfied that the order rejecting the post-confirmation petition filed by the petitioner were duly communicated to him as affirmed by the Union of India in its counter-affidavit. Not only the Union of India has given the reference number and the date of the letter rejecting the said petition but has also mentioned several facts in support of its averment - and also to establish that until 1983 the petitioner never complained of not receiving the said orders of rejection. The facts referred to in the counter-affidavit are. (a) the petitioner filed a request for an interview with the Chief of Army Staff. This request was rejected under Letter No. A/36044/PS 1-B dated 27th March, 1976. In this letter also it was reiterated that the post-confirmation petition filed by the petitioner was rejected already. (Copy of the letter is enclosed as Annexure-I to the counter which clearly says so and also gives the reference of the letter dated September 18, 1973.) (b) On 20th April, 1983 the petitioner submitted a fresh petition under Section 164(2). In this letter the petitioner did not complain that he was not informed of the rejection of his earlier petition under Section 164(2). He merely sought for reconsideration of his case.

It is also stated in the counter-affidavit that this second petition under Section 164(2) was processed and sent to Central Government because at that time the records relating to rejection of earlier petition were not available. It is also pointed out that no person would have kept quiet for a period of more than ten years without taking any steps if he had not really received the orders upon his petition. It is stated that the said rejection orders were sent to the petitioner's advocate under registered post and they were not returned to the department which indicates its receipt by the addressee. On the basis of the above facts, we accept the case of the Government of India on this aspect. Once this is so, it cannot be said that the petitioner is not guilty of laches.

The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited

- A certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over thier rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India - and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.

- In the face of the above factual position, the petitioner cannot also take advantage of the ex-parte orders made by this court on November 11, 1985 in Writ Petition No. 12590 of 1983 which merely says that if really the petitioner has not been communicated the orders upon the post-confirmation petition as alleged by him, the same may be communicated to the petitioner at an early date. The order of the Supreme Court which is ex-parte, and without notice to the respondent's therein, reads thus :

- E "Writ Petition is dismissed. *It is submitted by the petitioner* that he has already made a representation to the Central Government on 5.10.1972 against the order (against the finding and conviction recorded against him) by the Court Martial and the sentence given on 15.5.1972 under S. 164 ss. (ii) of the Army Act, 1950 which was confirmed by the Chief of the Army Staff and that this petition has not been disposed of despite several reminders. *If this be so* we would ask the Central Government to dispose of this matter as early as possible and in any event, not later than the expiration of three months from today. This order may be communicated to the Secretary, Ministry of Defence, Government of Indfia."

- G (Emphasis added)

- H Yet another submission urged by the petitioner is that where the order impugned is without jurisdiction, the plea of laches ought not to be entertained. He sought to bring certain decisions in support of this contention. The petitioner could not, however, satisfy us as to why the order

impugned in the writ petition is without jurisdiction. In this view of the matter, it is not necessary to deal with the decision cited. In the circumstances, we see no substance in this Special Leave Petition which is accordingly dismissed. A

No order as to costs.

No order on Civil Miscellaneous Petition. B

S.M.

Petition dismissed.