IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.2522 of 2025 alongwith CWP Nos.2535, 2338 and 2545 of 2025

Decided on: 25.02.2025

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1. CWP No.2522 of 2025
Union of India and Others ...Petitioners

Versus

Pawna Devi ...Respondent

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2. CWP No.2535 of 2025
Union of India and Others ...Petitioners

Versus

Ex. Hav Dharam Singh ...Respondent

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3. CWP No.2338 of 2025
Union of India and Others ...Petitioners

Versus

Ex. Naik Suresh Kumar ...Respondent

AND

4. CWP No.2545 of 2025
Union of India and Others ...Petitioners

Versus

Ex. Sep Rewal Singh ...Respondent

Coram
Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

Hon'ble Mr. Justice Ranjan Sharma, Judge

[1] *Whether approved for reporting? Yes.*

For the petitioners: Mr. Balram Sharma, Deputy Solicitor General of India [Senior Advocate] with Mr. Rajeev Sharma, Advocate, in all the petitions.

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[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

G.S. Sandhawalia, Chief Justice *[Oral]*

This order will dispose of four Writ Petitions filed by Union of India, where the challenge has been made to the orders passed by the Armed Forces Tribunal, Chandigarh, Regional Circuit Bench at Shimla.

2. The relief has been granted to the petitioners before the Tribunal way back on 20.05.2022 in the first case, the subject matters of challenge in CWP No.2535 of 2025. Similarly, a challenge in CWP No.2338 of 2025 titled as Union of India & Ors. Versus Ex. Naik Suresh Kumar, the Tribunal decided the matter on 24.08.2022. In CWP No.2522 of 2025 titled as Union of India & Ors. Versus Pawna Devi, the Armed Forces Tribunal decided on 04.11.2022, is also similar to the decision passed in November, 2022 challenged in CWP No.2545 of 2025 titled as Union of India & Ors. Versus Ex. Sep Rewal Singh.

3. The writ petitions by the Union of India have been filed in January and February 2025. We are not deciding the issue on merits in these set of cases. We are primarily concerned with the issue of delay in filing these petitions. We would take the facts from Union of India while taking up case of Pawna Devi in CWP No.2522 of 2025 to notice that the claim is for grant of ordinary family

pension and the Tribunal vide impugned order dated 04.11.2022, while granting the benefit had restricted the arrears to three years prior to the filing of the application which is 28.01.2019. The amounts were to be released within a period of three months from the date of receipt of certified copy by the Learned Senior Panel Counsel, failing which it was to carry interest @ 8% from the date of the order till realization of the entire amount.

4. We are of the considered opinion that though there is no period prescribed for filing the writ petitions which challenge the orders of the Tribunal while invoking the power under Article 226 of the Constitution of India, but the Union of India cannot be permitted free play, as such to challenge the said orders at its own whims and fancies after a period of over two years in all these set of cases. The parties to the litigation have developed a vested right as such after the orders have come in force in their favour and for the Union of India as such to file these writ petitions after the delay as mentioned above, cannot as such be countenanced in the absence of any justifiable reasons.

5. The stock reason given for delay is that in ***Civil Appeal No.447 of 2023 titled as Union of India & Ors.***

Versus Parashotam Dass, was decided on 21.03.2023, wherein the Hon'ble Apex Court held that there is no restriction to exercise the power under Article 226 of the Constitution of India to challenge the orders passed by the Armed Forces Tribunal. The fall back has been made on an opinion dated 18.09.2023 given by learned Attorney General to file writ petitions to challenge the said order and therefore, justification has been made that a decision was taken on 18.10.2023, based on the said advice.

6. It is also not disputed that prior to the order passed in the case of ***Parashotam Dass [supra],*** there was a right of appeal to the Supreme Court under the Armed Forces Tribunal Act of 2007, prescribing a period of 90 days of the said decision under Section 30 of the Act.

7. There is nothing to show that after passing of the order of Tribunal, the Union of India had preferred its remedy before the Hon'ble Apex Court within the prescribed period. Only on account of the fact that judgment has been passed in the case of ***Parashotam Dass [supra]*** and opinion has been given by learned Attorney General to a set of cases, the sufficient cause is sought to be made out.

8. Thus, we can safely hold that there is deliberate

inaction and lack of bonafide by the Union of India which amounts to gross negligence and the Union of India cannot take advantage of an order passed by the Hon'ble Apex Court whereby, the right to challenge the orders of the Armed Forces Tribunal has been cemented by noticing that constitutional provisions under Article 226 of the Constitution of India cannot be curtailed.

9. As per averments made in the writ petitions itself, the decision to file the writ petitions was only taken on 18.10.2023 after taking the opinion of the learned Attorney General to file the writ petitions and thus, the inaction is clear, as the order impugned was passed more than a year earlier.

10. As noticed, the Tribunal had passed various orders way back in May, August & November, 2022 and for a period ranging to 1 year to 1½ years, the Union of India opted not to challenge the said orders.

11. In service matters, the Hon'ble Apex Court has time and again held that the orders passed by the authorities regarding seniority etc. be challenged within a reasonable time and reference can be made in the judgment of ***P.S. Sadasivcaswamy v. State of Tamil Nadu, AIR 1974 SC 2271,*** whereby the right has been

curtailed of the litigants to challenge the administrative orders or claim the right to seniority by filing the writ petitions.

12. The said principle can be kept in mind while deciding the present cases also. The concept of liberal approach has to be kept in mind, but the concept of reasonableness and a total unfettered free play cannot be permitted and there is a distinction between inordinate delay and delay of short duration. The fundamental principle before the Court is to weigh the balance of justice in respect of both parties and inaction of a party cannot be given the go-by in the name of a liberal approach and the lack of *bonafide's* which is a relevant factor.

13. In ***State of Nagaland versus Lipok AO and others*** **(2005) 3 SCR 108,** certain amount of latitude was held permissible to the officers/officials of the Government by applying the principles of 'a little play at a joints' and resultantly the delay of 57 days which had occurred in filing the application for leave to appeal in view of the provisions under Section 378 (3) of the Code of Criminal Procedure had been allowed. It was, however, held that the State has impersonal machinery which works through its officers or servants to grant the said relief keeping in view

the nominal delay.

14. Similar principles have been laid down in ***Karnataka Power Corporation Ltd. and another versus K. Thangappan and another*** **(2006) 4 SCC 322.** It was held that the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as it will cause prejudice to the opposite party. Accordingly it was held that the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction while relying upon the judgment in State of *M.P vs. Nandlal Jaiswal (1986) 4 SCC 566. In* ***Tridip Kumar Dingal and others versus State of West Bengal and others (2009) 1 SCC 768,*** it was held that there is no upper or lower limit of limitation. The principles were accordingly laid down that invocation under Article 226 of the Constitution of India should be invoked at the earliest. Accordingly, it was held that jurisdiction of the writ Court has to be invoked at the earliest reasonably possible opportunity. This principle was not to encourage agitation of stale claims and exhume matters which had already been disposed of or settled. Thus, it was left open to the Writ Court as being question of discretion which will be decided on the basis of facts

before the Court depending and varying from case to case. Thus, what is to be kept in mind is that the writ Court has to be vigilant not to expose the other side unnecessarily to face litigation if the explanation offered is not to be accepted or is fanciful in nature which has already been noticed by us in the facts and circumstances of the present case.

15. In ***Pundlik Jalam Patil (D) by LRs versus Exe. Eng. Jalgaon Medium Project and another*** **(2008) 17 SCC 448,** the delay as such of 1724 days in filing the appeals which had been condoned by the Bombay High Court was set aside by holding that the Limitation Act does not provide for a different period to the Government for filing appeals or applications and statutes of limitation are prescribed as 'Statute's of peace'. It was accordingly held that where the Government makes out a case and where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers, the benefits as such could be given, which is not the case herein.

16. In ***Oriental Aroma Chemical Industries Ltd versus Gujarat Industrial Development Corporation and another*** **(2010) 5 SCC 459,** it was held that law of limitation is founded on public policy and resultantly the

appeal was allowed and the order condoning the delay as such of four years in filing of the appeal was set aside by holding that in the absence of any plausible/tangible explanation for long delay of more than four years in filing of appeal, there was no valid reasons to condone the delay.

17. In ***Chief Postmaster General and others versus Living Media India Limited and another*** **(2012) 3 SCC 563,** the principles as such have been laid down that the department could not take advantage of impersonal machinery or the inherited bureaucratic methodology and the law of limitation binds everybody including the Government. The relevant paras of the said judgment reads as under:-

> *"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.*

28. *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.*

29. *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of*

> *various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."*

18. In ***Maniben Devraj Shah versus Municipal Corporation of Brihan Mumbai*** **(2012) 5 SCC 157,** it has been held that a litigant acquire certain rights and if the Court finds that there is negligence in prosecuting the case then it would be a legitimate exercise of discretion not to condone the delay.

19. In ***B. Madhuri Goud versus B. Damodar Reddy*** **(2012) 12 SCC 693,** it was noticed that there is a life span for such legal remedy for the redressal of such injuries so suffered and unending period lead to unending certainty and consequential anarchy. The Rules of limitation were held not meant to destroy the rights of the parties.

20. In ***Esha Bhattacharjee versus Managing Committee of Raghunathpur Nafar Academy and others*** **(2013) 12 SCC 649**, the principles of limitation were culled out as under:

> *"i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for*

the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted

whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

21. In State of ***Madhaya Pradesh versus Bherulal***

(2020) 10 SCC 654, the apex Court has commented upon the tendency of the State as such to file 'Certificate Cases' in order to cover up its lapse.

22. In ***State of Orissa and others versus Sunanda Mahakuda*** **(2021) 1 SCC 560,** similar observations came forth from the apex Court while dismissing a Special Leave Petition which was time barred and proceedings had been filed after contempt proceedings had been initiated on the dismissal of the writ appeal and therefore, the conduct of the State Government was depreciated while imposing costs of Rs.25000/-.

23. Similar was the position in ***State of Uttar Pradesh and others versus Sabha Narain and others*** **(2022) 9 SCC 266,** which is a three Judge Bench verdict. The relevant portion reads as under:-

> *"4. We have also categorized such kind of cases as "certificate cases" filed with the only object to obtain a quietus from the Supreme Court on the ground that nothing could be done because the highest Court has dismissed the appeal. The objective is to complete a mere formality and save the skin of the officers who may be in default in following the due process or may have done it deliberately. We have deprecated such practice and process and we do so again. We refuse to grant such certificates and if*

> *the Government/public authorities suffer losses, it is time when concerned officers responsible for the same, bear the consequences. The irony, emphasized by us repeatedly, is that no action is ever taken against the officers and if the Court pushes it, some mild warning is all that happens."*

24. In ***Pathapati Subba Reddy (died) by LRs and others vs. Special Deputy Collector (LA)*** **2024 SC OnLine SC 513,** it was also held that stale matters cannot be entertained to defeat the substantial law of limitation and Statute.

25. It is not the case of Union of India that there is any fraud or misrepresentation in the present set of cases, whereby mainly the legal representatives of the Armed Forces are seeking redressal of their rights. The State or the public body can be given some acceptable latitude keeping in view the law laid down by the Hon'ble Apex Court in the principle of limitation and though no precise formula, as such, can be laid down, but we cannot brush aside the fact that the parties in view of the orders passed by the Tribunal could have also resorted to getting the orders executed by filing appropriate remedies and Tribunal has also granted the benefit of penal interest, if the payment is not made within the prescribed period.

Inspite of this fact the Union of India chose to sit tight and chose not to file the writ petitions within a reasonable period which can be classified as one year and beyond the same, no indulgence can be granted.

26. Therefore, the period prior to 18.10.2023 as such between the date of the decisions ranging from May/August/November, 2022 cannot be condoned in any manner and therefore, we are of the considered opinion that the present writ petitions are liable to be dismissed on the grounds of delay and laches as on account of Union of India not having resorted to its legal remedies expeditiously or even having made reasonable effort to challenge the said orders or even take a decision as such to challenge the said orders for a period of over one year. The latitude as such on account of laxity on the department, in such circumstances cannot be extended.

27. Without going into the merits of the cases, we are of the considered opinion that there is a delay of over a year from passing of the orders and no effort was made to challenge the order passed by the Tribunal within a reasonable time, therefore, on account of the opinion given on 18.09.2023, the Union of India cannot raise the issue on merits.

28. Resultantly, there is no other option, but to dismiss these four writ petitions on account of the principle of delay and laches and the same are accordingly dismissed alongwith pending miscellaneous application(s), if any.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

February 25, 2025
[Bhardwaj/ Chiranjeev]