

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

+ **WP(C) No.13941/2009**

% **Date of Decision: 18.03.2010**

Ram Sahai Meena (Sub Inspector) Petitioner
Through Mr. Arun Bhardwaj and Ms. Archana
Gaur, Advocates

Versus

Union of India and Another Respondent
Through Ms. Jyoti Singh and Mr. Ankur Chhibber,
Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has challenged the order dated 6th August, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.2139 of 2007 titled Ram Sahai Meena v. Union of India and anr. dismissing the original application filed against the order dated 14th June, 2007 passed by Joint Commissioner of Police as

appellate authority dismissing the appeal of the petitioner being barred by time.

A regular departmental inquiry was ordered against the petitioner on 1st July, 2002 on the allegation that while posted at Police Station: O.I. Area, he arrested one Kailash Chand. The son of Shri Kailash Chand, namely, Shri Dinesh Chand was contacted and an amount of Rs.1.00 lakh was demanded as bribed in lieu to spare Shri Kailash Chand. The conversation of the petitioner, Ram Sahai, and the complainant, Dinesh Chand, was recorded by the CBI which indicated and reflected that the petitioner did not refuse the offer and the petitioner rather gave the telephone number to the complainant for making further contact and to arrange a telephonic conversation between him and Shri Kailash Chand, father of the complainant.

The inquiry officer recommended the discharge of petitioner, however, the disciplinary authority issued a disagreement note and after consideration the representation made by the petitioner against the disagreement note, passed the punishment order dated 14th November, 2005.

The petitioner challenged the punishment order dated 14th November, 2005 by filing an appeal before the appellate authority. The appeal was not filed within time. It appears that the appeal was filed

because on account of penalty of censure, the petitioner was not given promotion which was allegedly due to him in June 2006. Since the appeal was belated and no cogent and sufficient reason was disclosed by the petitioner, the appellate authority dismissed the appeal being barred by time.

Aggrieved by the order of the appellate authority dismissing the appeal being barred by time, the petitioner preferred the original application before the Tribunal contending inter alia that it was not proper for the appellate authority to dismiss the appeal merely on the ground that the same was barred by time without considering the other pleas raised by the petitioner.

The Tribunal while dismissing the original application resorted to Rule 24(3) of Delhi Police (Punishment and Appeal) Rule, 1980 contemplating limitation for filing the appeal as 30 days from the date of the receipt of the order. The Tribunal has held that since the petitioner belongs to a disciplined force, he is expected to know about his rights and a sympathetic view cannot be taken especially as no cogent and sufficient reason has been disclosed.

The learned counsel for the petitioner has not disputed that the appeal was filed after the gap of about 11 months and 19 days after

expiry of 30 days prescribed under Rule 24 (3) of Delhi Police (Punishment and Appeal) Rule, 1980. Learned counsel for the petitioner is also unable to show any reason or ground raised by the appellant to explain to delay in filing the appeal except that he was disturbed due to family problems. A bald allegation that the petitioner was disturbed due to family problems without specifying anything further does not constitute sufficient reason for condonation of delay in filing the appeal. If the petitioner failed to disclose any reason for condonation of delay, the order of the appellate authority to dismiss the appeal cannot be held to be contrary to any rule or law established for condonation of delay in filing the appeal. Merely filing an appeal with a bald averment that the petitioner was disturbed on account of family problems would not entitle him for condonation of delay and consequently even dismissal of the original application by the Tribunal sustaining the order of appellate authority cannot be faulted in the facts and circumstances.

Considering also the facts of the case, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India. This cannot be disputed that for issuing a writ for any other purpose under article 226 of the Constitution of India, it has always been in the discretion of the High Court to interfere or not, depending upon the facts and circumstances of each case. It is not necessary for the High

Court in exercise of its writ jurisdiction to interfere in every case where there is violation of fundamental or statutory rights. Reference in this connection can be made to the decisions of the Supreme Court in *Durga Pershad Vs The Chief Controller of Imports and Exports*, AIR 1970 SC 769, holding that even where there is an allegation of breach of fundamental right, the grant of relief is discretionary and such discretion has to be exercised judiciously reasonably. Constitution Bench of the Supreme Court in *The Moon Mills Ltd. vs M.R.Meher*, AIR 1967 SC 1450 had held that writ is legally a matter of sound discretion and would not be issued if there be such negligence or omission on the part of the applicant to assert his right as taken on conjunction with the lapse of time and other circumstances. In *Shangrila Food Products Ltd. Vs Life Insurance Corporation of India* (1996) 5 SCC 54, the Supreme Court had held that " the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extra ordinary, is normally exercisable keeping in mind the principle of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair game before granting relief.

The order of the Tribunal impugned before us does not suffer from any such illegality or irregularity which shall entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

MARCH 18, 2010
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MOOL CHAND GARG, J.