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**(2005) 07 GAU CK 0008**  
**In the Gauhati High Court**

Mutum Irabot Singh

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

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**Date of Decision :** 06-07-2005

**Acts Referred:**

**Citation :** (2005) 07 GAU CK 0008

**Hon'ble Judges :** M.B.K.Singh, J

**Bench :** Single Bench

**Advocate :** Md.Jalaluddin, A.Mohendra, Advocates appearing for Parties

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## Judgement

1. Heard Mr. A. Mohendro learned counsel appearing on behalf of the petitioner and Mr. Jallaluddin, learned Addl. Govt. Advocate appearing on behalf of the respondents.

2. On perusal of the materials before the court in the light of the submissions made by both sides, the following facts are ascertained:

On 19.01.1990, the petitioner, who was then serving as a lance naik at Lokchao Out Post under an Assistant Commandant of the 8th Bn.Manipur Rifles, was served with an order placing him under suspension in contemplation of a Departmental Enquiry against him for his alleged misbehavior with civilian in the evening of 7.01.1990. A copy of the suspension order is at AnnexureA/1. He was also served with a memorandum informing him necessary facts in connection with the proposed enquiry and directing him to submit his showcause statement on or before 29.01.1990. A copy of the said memorandum is at AnnexureA/2. He submitted his showcause statement on 01.02.1990 i.e. after two days from the specified date. A copy of the said showcause statement is at Annexure A/3. Then, on 10.4.1990, the last showcause notice was issued and furnished through his relatives on 7.5.1990 informing him about the findings of the concerned Enquiry officer in the said Departmental Enquiry and directing him to submit his explanation as to why he should not be dismissed from service. The explanation was required to be submitted within one week from the date of receipt of the

notice. A copy of the said notice is at AnnexureA/4. His explanation was, however, not considered on the ground of nonsubmission of it within time. Thereafter, on 19.5.1990, the Commandant, 8th Bn. Manipur Rifles passed an order on 19.5.1990 dismissing the petitioner from service purportedly on the basis of the findings in the Departmental Enquiry . A copy of the said dismissal order is at AnnexureA/5. Being aggrieved by the said order of the Commandant, the petitioner filed an appeal to the DIG(OPS), Govt. of Manipur on 17.01.1991 and on failure of the concerned authority to dispose of the appeal, he obtained an order of the High Court in C.R. No. 1251/1994 on 30.11.1994 directing the concerned authority to dispose of the appeal within one month from the date of receipt of the judgment. Thereafter, the DIG(OPS) rejected the appeal vide order being No. H4/80/94OPs/11084 dated 20th December,1994 and upheld the said order of the Commandant. A copy of the said order disposing the appeal is at AnnexureA/8. After about 8 years of the disposal of the statutory appeal, the petitioner filed a representation dated 5.9.2002 to the Hon"ble Chief Minister, Manipur and the same was sent down to the DGP, Manipur to examine and process with comments for further necessary action. The DGP, Manipur , after calling parawise comments from the Commandant of 8th Bn. Manipur Rifles in respect of the said representation, treated it as an appeal and directed the DIG(OPS) to dispose it. The DIG(OPS) rejected the said appeal also vide order dated 18.10.2002. A copy of the said order is at AnnexureA/11.

4. The present writ petition has been filed praying for quashing the said dismissal order passed by the commandant, 8th Bn. Manipur Rifles being No. 82/34/868MR dated 19.5.1990, the order of the DIG(OPS), Manipur being No. H4/80/94Ops/1108 passed on 20th December, 1994 rejecting the statutory appeal filed against the dismissal order and the subsequent order of the DIG(OPS), Manipur being No. H7/OPS/PHQ/2001/Pt/1325 passed on 18.10.2002 rejecting the said appeal taken up on the basis of the representation made to the Chief Minister, Manipur after about 8 years of the disposal of the statutory appeal.

5. The above said orders are being challenged mainly on the ground that the said Departmental Enquiry was not held legally and properly in accordance with the relevant law and that it was held in violation of principle of natural justice and that as such, the said orders passed on the findings made in the enquiry are not sustainable in the eye of law.

6. Before entering into the merit of the case, it is necessary to consider the fact of delay in filing this writ petition. It is ascertained that this writ petition was filed after about 9 years from the date of disposal of the statutory appeal filed against the dismissal order. No appreciable explanation is found given for the delay. In these circumstances, this court in exercise of its discretion is not supposed to assist the tardy, indolent or acquiescent and the lethargic. It is well settled that if there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It is so because it is likely to cause confusion

and public inconvenience and bring in new injustices.

7. In *Bhoop Singh v. Union of India & Ors*, AIR 1992 SC 1414, a bench of 3 Judges of the Supreme Court held:

“Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby give rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled up promptly. A person cannot be permitted to challenge the termination of his service after a period of 22 years without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petition being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to consider Dharampal in the manner suggested by the petitioner. Article 14 or the principle of nondiscrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its relief being discriminatory as asserted by the learned counsel for the petitioner.”

8. In the present case, though the challenge against the dismissal order is not one made after 22 years as in the above referred case before the Hon'ble Supreme Court, it is after more than 13 years from the date of impugned dismissal order and after about 9 years of the disposal of the statutory appeal filed against the said dismissal order.

9. In *Municipal Council, Ahmednagar v. Saha Haider Beig*; AIR 2000 SC 671, the Hon'ble Supreme Court held to the following effect:

It is well settled principle of law that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, “delay defeats equity” has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be granted if the petitioner has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant and this being a basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

10. The learned Judges constituting the Constitution Benches in *Tilokchand Motichand & ors. v. H.B.Munsi* ; AIR 1970 SC 898 expressed different views as regards delay. The sum and substance of the said view is that though the

limitation act does not apply as such its provisions may be kept in view while deciding the said question of delay. M.Hidayatullah, the Hon''ble Chief Justice, stated as follows:

9. In India we have the Limitation Act which prescribes different periods of limitation for suits, petitions or applications. There are also residuary Articles which prescribe limitation in those case where no express period is provided. If it were a matter of a suit or application, either an appropriate article or the residuary article would have applied. But a petition under Art.32 is not a suit and is also not a petition or an application to which the Limitation Act applies. To put curbs in the way of enforcement of Fundamental Rights through legislative action might well be questioned under Article 13(2). The reason is also quite clear. If a short period of limitation were prescribed the Fundamental Right might well be frustrated. Prescribing too long a period might enable stale claims to be made to the detriment of other rights which might emerge.

10. If then there is no period prescribed what is the standard for this Court to follow? I should say that utmost expedition is the sine qua non for such claims. The party aggrieved must move the court at the earliest possible time and explain satisfactorily all semblance of delay. I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where I there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction.?

11. Keeping in view the above said decision and having regards to all the relevant considerations, this court has no hesitation in holding that there is inordinate delay in filing the present writ petition. It is already found that no reason or explanation is found given for the delay. No doubt, the petitioner filed a representation to the Chief Minister, Manipur and the same was disposed only on 18.10.2002, i.e., about 1 year before the date of filing the case but no explanation is given by the petitioner as to why he filed the said representation to the Chief Minister after about 12 years from the date of dismissal order and about 8 years from the date of order of the appellate authority and also as to why he filed the writ petition after about 13 years of the dismissal order and after about 9 years of the order of the appellate authority. The petitioner's delay in making the said representation to the Chief Minister, Manipur which is not provided under the law, cannot be considered as a valid explanation for the delay in filing this writ petition. There is no reasonable ground as to why the principle laid down by the Supreme Court in Bhoop Singh Case (Supra) should not apply in the present case wherein there is inordinate delay and as well as there is no reason or explanation for the delay.

12 In the result, the petitioner is not entitled to any of the discretionary relief from this court. I am not inclined to enter into the merit of this case. This writ petition is dismissed for the reason of inordinate delay in filing it without any valid and acceptable explanation for the delay.