IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 08.10.2026
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Whether the operative part or full judgment is pronounced: ***Full***

WP(C) No.1763/2025

SHOWKAT HUSSAIN RATHER

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Mohammad Hussain, Advocate.

Vs.

J&K BANK LIMITED & ORS.

...RESPONDENT(S)

Through: - Mr. Shafqat Nazir, Advocate, with
Ms. Sabreena Bashir, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The services of the petitioner, who was working as Officer Scale-1, were terminated in terms of the dismissal order dated 15.03.2008. He was also prosecuted before the Court of learned 4th Additional Sessions Judge, Srinagar, for commission of offences under Section 420, 467, 409 RPC arising out of FIR No.74/2005 but was acquitted in terms of judgment dated 26.11.2024.

2) Following his acquittal, the petitioner has filed the present petition for quashing the dismissal order dated

15.03.2008 and directing the respondents to release his full salary, along with all consequential service benefits, from the date of dismissal till the date of his retirement, as well as all admissible post-retiral benefits.

3) It is stated by the petitioner that he was charge-sheeted, subjected to a disciplinary enquiry, and dismissed from service vide order dated 15.03.2008. It is contended that the petitioner was subjected to the rigor of a criminal trial based on the exact same set of allegations and, after 17 long years, was acquitted of all charges vide the judgment supra, with the Criminal Court explicitly finding no evidence of forgery, fraud, or misappropriation. The petitioner further submits that the departmental inquiry was vitiated by procedural irregularities and bias. Consequently, once the Criminal Court acquitted him of any wrongdoing, he became entitled to all consequential benefits up to his age of superannuation.

4) The respondent-Bank has filed response to the writ petition, stating therein that the petitioner is seeking reappreciation of evidence and substitution of finding, which is beyond the jurisdiction of this Court and the dismissal order dated 15.03.2008 has already attained finality. The petitioner after 17 long years, when he has crossed the age

of superannuation, cannot file the writ petition on the basis of subsequent judgment dated 26.11.2024. It is also stated that the acquittal in criminal proceedings does not invalidate the departmental proceedings and it is settled law that disciplinary action is independent of criminal trial, the standard of proof being entirely different. It is also stated that the petitioner misused his official position to prepare and sanction fictitious loans against stolen fixed deposit receipts, which were detected during internal investigation. The petitioner's contention that the departmental proceedings were not in tune with law and, therefore, vitiated, is false. He was served with a regular chargesheet dated 28.05.2005, supplementary chargesheet dated 06.06.2005 and a second supplementary chargesheet dated 07.12.2005. Despite repeated reminders, he initially failed to submit reply, leading the Disciplinary Authority to order a full-dress enquiry under Rule 375(b) and 376 of the Officers Service Manual, 2000. Upon receipt of his belated reply, the same was duly placed before the Enquiry Officer. The petitioner was provided with complete opportunity to participate, cross-examine witnesses and adduce evidence. The proceedings were transparent, in conformity with service rules and guided by the principles of natural justice. The Enquiry Officer conducted proceedings independently and

impartially. The petitioner was given repeated opportunities, but he adopted dilatory tactics, seeking adjournments on flimsy grounds to delay conclusion. Despite his evasive approach, the Enquiry Officer meticulously considered all material evidence and submissions of both sides. The findings proved each article of the charge. The Disciplinary Authority thereafter issued a show cause notice, supplied the petitioner with enquiry report and also afforded him personal hearing. Thus, the petitioner cannot allege denial of fair opportunity. It is further stated that scope, object, and standard of proof in departmental proceedings is distinct from criminal trial. While the criminal prosecution required proof beyond reasonable doubt, a departmental proceeding is summary and based on preponderance of probabilities.

5) Learned counsel for the petitioner has submitted that the petitioner filed representation in the year 2005, but the same has not been decided by the respondents. He submits that the respondents be directed to decide the representation.

6) *Per contra*, Mr. Shafqat Nazir, learned counsel for the respondents, has submitted that the petitioner was dismissed after a full-fledged departmental enquiry and the petitioner participated in the proceedings and now after 17

long years, he cannot assail the order of dismissal merely on the ground that he has earned acquittal in the chargesheet on the same set of allegations.

7) Heard and perused the record.

8) The petitioner has assailed the impugned dismissal order on twin grounds: firstly, that the departmental inquiry was vitiated by procedural irregularities and bias; and secondly, that the disciplinary findings cannot stand in light of the judicial acquittal on the same charges.

9) As regards the petitioner's first contention that the departmental enquiry was vitiated by procedural irregularities and bias, it would be apt to observe that after fully participating in the enquiry, the petitioner slept over his rights for 17 long years and chose to raise this plea only after his acquittal. Having acquiesced to the proceedings for nearly two decades, it is now far too late in the day to challenge the enquiry on ground of procedural infirmity or bias. This contention, being barred by gross delay and laches, is accordingly rejected. In this context, it would be apposite to take note of the judgment of the Hon'ble Apex Court rendered in **Union of India v. N. Murugesan, (2022) 2 SCC 25,** and the relevant paras are extracted as under:

Laches

21. The word "laches" is derived from the French language meaning "*remissness and slackness*". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act.

> From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.

10) It would be apt to take note of another judgment of the Hon'ble Apex Court rendered in **SBI v. M.J. James, (2022) 2 SCC 301,** and the relevant paras are extracted as under:

> **35. Further, the dismissal order passed on 18-4-1985 remained unchallenged for more than four years**, as the appeal to the Chief General Manager of State Bank of India was filed on 20-9-1989. The respondent, however, relies on Clause 22(*x*) of the Service Code relating to appeals, which reads thus:
>
> > "**22. (*x*)** An aggrieved employee in all such cases may appeal to the Board of Directors whose decision shall be final."
>
> Undoubtedly, the Service Code does not stipulate any time period within which the appeal may be preferred to the Board of Directors whose decision is to be final, but it is well settled that no time does not mean any time. The assumption is that the appeal would be filed at the earliest possible opportunity. However, we would hold that the appeal should be filed within a reasonable time.
>
> **36.** What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is non-existent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the

litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time. Pertinently, the challenge was primarily on the ground that the respondent was not allowed to be represented by a representative of his choice. The respondent knew that even if he were to succeed on this ground, as has happened in the writ proceedings, fresh inquiry would not be prohibited as finality is not attached unless there is a legal or statutory bar, an aspect which has been also noticed in the impugned judgment. This is highlighted to show the prejudice caused to the appellants by the delayed challenge. We would, subsequently, examine the question of acquiescence and its judicial effect in the context of the present case.

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38. In *Ram Chand* v. *Union of India* [*Ram Chand* v. *Union of India*, (1994) 1 SCC 44] and *State of U.P.* v. *Manohar* [*State of U.P.* v. *Manohar*, (2005) 2 SCC 126] this Court observed that if the statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who has been deprived of his rights has not approached the appropriate forum for relief. If a statutory authority does not pass any orders and thereby fails to comply with the statutory mandate within reasonable time, they normally should not be permitted to take the defence of laches and delay. If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in *Union of India* v. *Tarsem Singh* [*Union of India* v. *Tarsem Singh*, (2008) 8 SCC 648] may be continuing cause of action. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in para 6 of *Motilal Padampat Sugar*

Mills Co. Ltd. v. *State of U.P.* [*Motilal Padampat Sugar Mills Co. Ltd.* v. *State of U.P.*, (1979) 2 SCC 409] Applying this principle of acquiescence to the precept of delay and laches, this Court in *U.P. Jal Nigam* v. *Jaswant Singh* [*U.P. Jal Nigam* v. *Jaswant Singh*, (2006) 11 SCC 464] after referring to several judgments, has accepted the following elucidation in *Halsbury's Laws of England* : (*Jaswant Singh case* [*U.P. Jal Nigam* v. *Jaswant Singh*,

> "*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
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> (*ii*) any change of position that has occurred on the defendant's part.
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> 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?"

39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See *Prabhakar* v. *Sericulture Deptt.*, (2015) 15 SCC 1]. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See *Vidyavathi Kapoor Trust* v. *CIT*, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See *Krishan Dev* v. *Ram Piari*, 1964 SCC OnLine HP 5] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See "Introduction", U.N. Mitra, *Tagore Law Lectures — Law of Limitation and Prescription*, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports

> even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel *in pais*. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See *Vidyavathi Kapoor Trust* v. *CIT*, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.

11) The next contention raised by the petitioner is that the disciplinary findings are contrary to the judicial findings, despite being based on the same underlying facts. While it is undisputed that the petitioner was acquitted by the Criminal Court, it is well-settled law that mere acquittal in a criminal case does not automatically vitiate or invalidate departmental proceedings, owing to the distinct standards of proof applicable in each. Reliance is placed upon the decision of Apex Court rendered **Southern Railway Officers Association vs. Union of India, (2009) 9 SCC 24**, wherein it has been held as under:

> "37.Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well settled principle of law that the order of dismissal can be passed even if the

> delinquent official had been acquitted of the criminal charge."

12) It would also be appropriate to take note of the judgment of the Hon'ble Supreme Court of India in ***Karnataka Power Transmission Corpn. Ltd. v. C. Nagaraju*, (2019) 10 SCC 367**, and the relevant para is extracted as under:

> **13.** Having considered the submissions made on behalf of the appellant and Respondent 1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. **It is settled law that the acquittal by a criminal court does not preclude a departmental inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the criminal court if the evidence that is produced in the departmental inquiry is different from that produced during the criminal trial. The object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the inquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court.**

13) Besides, perusal of the judgment of acquittal recorded by the Criminal Court reveals that there is no honourable acquittal of the petitioner. It would be appropriate to take note of paras 56, 60, and 61 of the judgment:

> **56.** The evidence on record is not found to be cogent, substantial and convincing, the statements given by the prosecution witnesses does not support the prosecution story within the legal frame work. **The**

evidence adduced by the prosecution suffers from the grave infirmity and the prosecution has also failed to produce important witnesses as discussed hereinabove before this court and withholding of statements of the witnesses is fatal to the prosecution story/case and even some of the witnesses examined by the prosecution have deposed against accused and tried to connect the accused with the offences shown to have been committed by the accused persons by the prosecution, but their testimony is not corroborated by the other witnesses and are without legal support.

60. There is itself doubt in prosecution case, the version of the PW's are not convincing and cogent. **There is not full corroboration of witnesses with the prosecution case. There are different persons from different departments shown as witness to case, but all not produced.** The witnesses have not proved genesis of occurrence, as required in criminal trial. The case has not been proved against accused person within the legal parameters. In view of totality of facts and circumstances, most particularly the factor of contradictions, improvements and omissions in above stated discussion, missing factors of vital importance in the case, which are having great importance and influence on the present case, has direct influence and impact on the prosecution case.

61. In view of above stated facts and circumstances into consideration, **especially the material contradictions as discussed, doubted facts as pointed above, the cumulative effect of defects in prosecution and most particularly the major defects in investigation, it can fairly be said that the case does not fall within the category of case "proved beyond reasonable doubt" against accused. The involvement of accused in the commission of offence is not certain, sure and**

connected. There appears doubt in his involvement.

14) In the present case, the petitioner's acquittal resulted primarily from the non-production and non-examination of key prosecution witnesses. Such an acquittal, arising out of prosecutorial lapse or default rather than an honorable exoneration on merits, does not entitle the petitioner to assert that the disciplinary findings are contrary to the judicial findings.

15) In view of the above, the present writ petition is found to be without merit and the same is dismissed accordingly. Interim direction, if any, shall cease to be in operation.

(Rajnesh Oswal)
Judge

Srinagar,
30.10.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES**

HIGH COURT JAMMU & KASHMIR AND LADAKH