mentioned reasons for their discharge giving the nature of the complaints against the petitioners but this he did only under the directions issued by this court in civil writ petition 3819 of 1998 filed by the petitioners though the orders of discharge did not cast any stigma. In such a situation, the communication of reasons in pursuance to the directions issued by this court will not make their termination punitive. We thus do not find any infirmity in the impugned order passed by the Senior Superintendent of Police.

(11) Now coming to the judgment of this court in *Rakesh Kumar's* case (supra) on which strong reliance has been placed by the learned counsel for the petitioners. This judgment no doubt supports the case of the petitioners but with utmost respect to the Hon'ble Judges we do not agree with the observations made therein in view of the binding observations of the Apex Court in *Jagdish Mitter's* case (supra) and *Kaushal Kishore Shukla's* case (supra) which were not brought to the notice of the learned Judges of the Division Bench. The Full Bench judgment in *Sher Singh's* case (supra) too had not been brought to the notice of the learned Judges and we feel bound by the observations made therein. In the normal course, we would have referred the matter to a larger Bench but in view of the aforesaid binding decisions of the Supreme Court and a Full Bench of this Court, it is not necessary for us to adopt that course.

(12) In the result, there is no merit in the writ petition and the same stands dismissed leaving the parties to bear their own costs.

R.N.R.

Before Jawahar Lal Gupta and N.K. Sud, JJ

RAVINDERPAL SINGH—*Petitioner*

versus

U.T. CHANDIGARH AND OTHERS—*Respondents*

C.W.P. No. 9749 of 1998

16th January, 2001

Constitution of India, 1950—Art. 226—Allottees failed to pay the instalments of the premium—Estate officer ordering cancellation of the lease and resumption of the site after giving several opportunities to them—Appellate Authority dismissing the appeal as they failed to pay the outstanding amount—Long and unexplained

delay of more than 7 years in filing the revision petition—Revisional authority rightly dismissing the revision petition on the ground of delay—Though the petitioner was fully aware of the proceedings yet had not availed of the various opportunities to make the payment—Writ dismissed.

Held, that the aggrieved party can seek the remedy of 'appeal' and 'revision' only in accordance with law. If the provision prescribes a period of limitation, the aggrieved person has to approach the Court within that time. A relaxation can be allowed within the parameters, if any, laid down in the statute or only when a sufficient cause for condonation of delay is made out. The party cannot wait for years and then insist upon the condonation of delay by furnishing a flimsy explanation. In the present case, petitioner's appeal had been dismissed by the Chief Administrator on 9th April, 1990. After that date, the petitioner had waited for more than seven years till 10th February, 1998 when he had filed the revision petition. No explanation for this was given before the authority or has been offered even in the additional affidavit. Resultantly, the authority was entitled to take the view that the provisions of the Rules having not been complied with, no ground for interference is made out. The Advisor has not erred in dismissing the revision petition on the ground of delay.

(Paras 11 and 14)

S. C. Kapoor, Sr. *Advocate with*

Ashish Kapoor, *Advocate for the Petitioner*

Deepak Agnihotri, *Advocate for the Respondent*

JUDGMENT

Jawahar Lal Gupta, J. (ORAL)

(1) Has the Advisor to the Adminstrator erred in dismissing the revision petition on the ground of delay ? This is the primary question that arises for consideration in this case. A few facts as relevant for the decision of this case may be briefly noticed.

(2) The lease-hold rights of Site No. 302, Sector 35-D, Chandigarh, were auctioned on 9th July, 1985. The petitioner and his mother gave bid of Rs. 2,30,000. This bid was accepted. On 4th August, 1985 the letter of allotment was issued in favour of the petitioner and his mother (who has since expired). A copy

of this letter has been produced or record as Annexure P-1. The allottees had paid 25% of the premium viz. Rs. 57,000. The remaining amount had to be paid in three annual instalments of Rs. 65,731.15 p. each. The petitioner and his mother had also to pay the ground rent of Rs. 5,750 per year. They paid the first instalment. However, they did not pay the second instalment which had fallen due on 9th July, 1987. The Estate Officer initiated proceedings for the cancellation of the lease. A notice dated 11th November, 1988 was served upon the allottees. Thereafter, four opportunities were given. The case was adjourned to 6th December, 1988, 7th March, 1989, 13th June, 1989 and 4th July, 1989. Ultimately,—*vide* order dated 4th July, 1989 the Estate Officer ordered the cancellation of the lease and forfeiture of a part of the amount whcih had already been paid. Aggrieved by the order, the two allottees including the present petitioner filed an appeal under Rule 22 of the Chandigarh Lease Hold of Sites and Building Rules, 1973. The allottees were given several opportunities to pay the outstanding amount. It was not paid. Finally,—*vide* order dated 9th April, 1990 the Chief Administrator held that "the appellants are not inclined to pay Government dues. The ground for passing the cancellation of the lease was the non-payment of amount of 2nd instalment by the appellants which fell due on 9th July, 1987. The third instalment of the premium which became due on 9th July, 1988 has also not been paid". Thus, the appeal was dismissed.

(3) After the passing of this order, the present petitioner who was one of the two allottees along with his mother remained quiet till February 1998. He took no steps to challenge the order passed by the Chief Administrator for a period of more than seven years. The revision petition dated 10th February, 1998 was then filed before the Advisor. This petition was dismissed by the authority as it found itself unable to overlook the "delay in filing" the revision petition. He took the view that if such a long delay was condoned, the provisions of the Act and the rules would be rendered totally ineffective. Aggrieved by the orders, the petitioner has filed this writ petition. He prays that the orders dated 4th July, 1989, 9th April, 1990 and 25th April, 1998, copies of which have been produced as Annexures P-5, P-6 and P-8 respectively, be quashed.

(4) A written statement has been filed on behalf of the respondents controverting the claim made by the petitioner. During the pendency of the writ petition even an additional affidavit was filed. It was pointed out that in the auction held on 11th December, 1998 lease-hold rights in a similar site had

been sold for Rs. 16,30,000. Less than three months later, another site in the same sector had been sold for Rs. 24,70,000. On this basis, it has been pointed out that the relief claimed by the petitioner who had failed to make the payment of the lease money deserves to be declined.

(5) Counsel for the parties have been heard.

(6) Mr. Subhash Kapoor, learned counsel for the petitioner, contends that in the circumstances of the case the delay deserved to be condoned. He has further submitted that the petitioner had not been served any notice personally by the Estate officer before the order of resumption was passed. Thus, the impugned orders should be quashed. It has been also contended that even the tenant had not been served with any notice. On these grounds the counsel has prayed that the impugned orders be quashed. The claim made on behalf of the petitioner has been controverted by Mr. Deepak Agnihotri, appearing for the respondents.

(7) The three questions that arise for consideration are :—

1. Has the Authority erred in dismissing the revision petition on the ground of delay ?

2. Was the petitioner not served any notice and should the orders be quashed on that ground ?

3. Are the impugned orders vitiated for want of service of notice on the alleged tenant ?

Regarding - 1

(8) Admittedly the petitioner along with his mother was aware of the order dated 4th July, 1989 passed by the Estate Officer by which the site had been resumed. He had filed an appeal under Rule 22 before the Chief Administrator. This appeal was dismissed on 9th April, 1990. The petitioner could have under the Rules filed a revision petition within a period of 30 days. He had chosen to remain quiet till 10th February, 1998. The only explanation given in the petition was that he had suffered a heavy loss. His mother was seriously ill. She was suffering from cancer and had remained in bed for four years. She had, ultimately, passed away. Huge amount was spent on her treatment. The family had, thus, suffered a loss and could not pay the due amount.

(9) When did the petitioner's mother fall sick ? Where was she treated ? When did she die ? Nothing was disclosed. Even at the hearing of this petition an opportunity had been granted to the petitioner to give the details. He had filed Civil Miscellaneous No. 1180 of 2001 along with an affidavit dated 15th January, 2001. The only explanation given by the petitioner is contained in para 4. It reads as under :—

> "That the mother of the deponet who was a co-allotee with him, suffered from cancer and remained in bed for more than four years before her demise. That firstly deponent's mother consulted the Doctor in the year 1986 and she was found to be suffering from cancer. She consulted the Doctors in the year 1989, 1990. During all these years she remained under treatment of different Doctors and (in) different cities."

(10) It has been further stated that in February, 1990 she was shifted to Ferozepur where she died on 5th March, 1990.

(11) A perusal of this affidavit clearly shows that the petitioner's mother had expired in March, 1990. It was thereafter that the petitioner's appeal had been dismissed by the Chief Administrator on 9th April, 1990. After that date, the petitioner had waited for more than seven years till 10th February, 1998 when he had filed the revision petition. No explanation for this delay was given before the authority or has been offered even in the additional affidavit. In this situation, we are not persuaded to take the view that the competent authority had committed an error of law in dismissing the petitioner's revision petition. There was a long and unexplained delay of more than seven years. No explanation what soever for this delay was offered. Resultantly, the authority was entitled to take the view that the provisions of the Rules having not been complied with, no ground for interference is made out.

(12) Mr. Kapoor contends that delay has been condoned by their Lordships of the Supreme Court in various cases. First of all the counsel has referred to the decision of their Lordships of the Supreme Court in *Jasbir Kaur Vs. U.T. Chandigarh and others* (1), we have perused this judgment. The allottee had failed to make the payment in time. however, in pursuance to an interim order passed by the Court he had made the payment. Thus, the order impugned in that case was set aside. However, it deserves notice

(1) 1999 (1) P.L.J. 530

that on the question of delay no opinion was expressed by their Lordships. In fact, it was clearly observed in para 4 that they were not "expressing any opinion on the question of law as raised in this appeal .....". Thus, this decision is not an authority for the propoition that whatever be the delay, the competent authority is bound to ignore it and that the High Court has to grant relief to the allottee. Faced with this situation, learned counsel has referred to the decision of their Lordships of the Supreme Court in *Kashmir Chand* Vs. *Financial Commssioner, Haryana and Others* (2). This was a case in which the order passed by the High Court was challenged. Despite opportunity, no written statement had been filed on behalf of the respondents. In this situation, their Lordships were pleased to dispose of the appeal with the following observations :—

"Though time was taken for filing the counter, the same was not filed by the respondents. It is stated by Shri K.B. Rohtagi, learned counsel for the appellant, that his cilent had already deposited two instalments of the amount with interest @ 12% and one instalment is due. We prima facie accept the statement of the counsel to be correct. In case those payments have already been made, the appellant is given liberty to pay the balance amount within a period of 4 months from today. In case he has not already deposited or if he commits default in payment of the amount as directed, this order would stand vacated and the order of the High Court would stand restored."

(13) Even in this case it was not held that the authority is bound to overlook the delay.

(14) In our view, the aggrieved party can seek the remedy of 'appeal' and 'revision' only in accordance with law. If the provisions prescribes a period of limitation, the aggrieved person has to approach the Court within that time. A relaxation can be allowed within the parameters, if any, laid down in the statute or only when a sufficient cause for condonation of delay is made out. The party cannot wait for years and then insist upon the condonation of delay by furnishing a flimsy explanation. In the present case, we are satisfied that the petitioner had not shown sufficient cause.

(15) In view of the above, the first question is answered against the petitioner. It is held that the Advisor has not erred in

(2) JT 1996 (7) SC 5

dismissing the revision petition on the ground of delay.

Regarding - 2

(16) Mr. Kapoor contends that the petitioner was one of the two allottees. The notice regarding initiation of proceedings for cancellation of the lease and resumption of the site had been served only on Smt. Kartar Kaur and not on him. Thus, the impugned proceedings are vitiated.

(17) In paragraph 8 of the petition, it has been *inter-alia* stated that respondent No. 3 issued a notice under Rule 12(3). A copy of this notice has been produced as Annexure P-2 with the writ petition. It has been further stated that "a perusal of this notice would show that it was addressed to Smt. Kartar Kaur and others. Thus, the notice was neither addressed to the petitioner who was a co-purchaser nor was served upon him". The petitioner has nowhere averred that he was not aware of the proceedings. There is not even a suggestion that his mother had not informed him of the pendency of the proceedings. It is the admitted position that the proceedings had been initiated on 5th November, 1986. The petitoner's mother was alive on that date. It is not the petitioner's case that he was staying separately from her. It is, thus, clear that there is nothing on record to show that the petitioner was not personally aware of the pendency of the proceedings. Still further, the petitioner has not even produced the grounds of appeal filed by him before the Chief Administrator to show that even a plea that he had not been served had been raised. In fact, it is clear that the appeal was presented by the petitioner along with his mother within the period of limitation after the Estate Officer had ordered the cancellation of the lease and the resumption of the site. Even during the course of hearing, it does not appear to have been suggested before the Appellate Authority that the notice had not been served. Still further, the revision petition filed by the petitioner is on record as Annexure P-7. Learned counsel has not been able to refer to any averment in the revision petition to show that the petitioner did not have notice of the proceedings. It is, thus, clear that the petitioner is only looking for an excuse to challenge the order. In fact, he had notice of the proceedings. It is different matter that the petitioner had not availed of the various opportunties to make the payment.

(18) In view of the above, even the second question is answered against the petitioner.

Regarding-3

(19) Mr Kapoor has contended that the proceedings for the cancellation of the lease are vitiated as no notice had been served on the tenant. Is it so ?

(20) The sole averments made by the petitioner is contained in paragraph 12 of the writ petition. It reads as under :—

> "That it may be stated here that although the tenant was in possession of the premises yet no notice was served on him before the order of cancellation was passed."

(21) Who was the tenant ? When were the premises let out ? How much was the rent ? Was there any rent deed ? Was any rent paid ? There is nothing on the file. There is not even a suggestion as to when the alleged tenant had been inducted into the premises. Still further, no such plea is shown to have been raised by the petitioner either before the Appellate or the Revisional Authority. We are, thus, driven to the conclusion that the petitioner is merely looking for an excuse to challenge the order. There is nothing on record to suggest that the premises had been let out at any time prior to or even during the course of the pendency of the proceedings.

(22) In view of the above, even the third question is answered against the petitioner.

(23) At this stage, Mr. Kapoor has made an offer to pay the due amount with interest and penalty up to date. Mr. Agnihotri opposes this prayer. He has pointed out that the petitioner is making this offer only on account of the fact that the value of the property has risen manifold.

(24) The respondents have filed a categorical affidavit which shows that in December 1998 a similar site had been sold for Rs. 16,30,000. Less than three months later, another site in the same sector with similar dimensions had been sold for an amount of Rs. 24,70,000. The petitioner wishes to grab this property for a paltry sum of about Rs. 6 lacs. If this request is accepted, the petitioner shall recover the property in the year 2001 at the price which was payable in the year 1985. The interest and penalty would not be a due and reasonable compensation to the respondents for the defaults committed by the petitioner. The acceptance of the prayer shall result in avoidable loss to the public

exchequer. Larger public interest must outweigh the individual's interest. Thus, we find no ground to accept the petitioner's prayer. It is consequently declined.

(25) No other point has been raised.

(26) In view of the above, we find no merit in this writ petition. It is, consequently, dismissed. However, there will be no order as to costs.

R.N.R.

Before S.S. Sudhalkar and Mehtab S. Gill

SANJEEV KUMAR GUPTA—*Petitioner*

versus

P.O.L. C-II, FARIDABAD AND ANOTHER—*Respondents*

C.W.P. No. 13663 of 1999

1st November, 2000

Industrial Disputes Act, 1947—S. 2(s)—Termination of an Accounts Executive—The duties of an Accounts Executive to prepare voucheres/details of cheques—Not conferred managerial/ administrative powers—Whether covered under the definition of 'workman' as provided u/s 2(s) of the Act—Held, yes—A person shall not cease to be 'workman' if he performs some supervisory duties—Nature of work cannot be adjudged from the allowances a man is getting.

Held, that if we see the definition of 'workman' as a whole, supervisory work is one of the duties which the workman has to do. There are other types of work such as clerical, technical, operational etc. For those types of work, there is no limit so far as earning capacity is concerned for exclude them from the definition of workman. It will be dangerous to adjudge the nature of work from the allowances a man is getting. Nature of work is allotted to him by virtue of his post. The petitioner was doing the work of preparing vouchers/details of cheques and that he had no managerial/administrative powers. It is not shown as to what specific the work of the petitioner was. This being so and from the work allegedly allotted to the post of the petitioner, the conclusion that has to be drawn is that the petitioner was a 'workman' as