

(2019) 11 CAL CK 0092

In the Calcutta High Court

Case No : Wp. Central Tribunal (WPCT) No. 279 Of 2019

Alias Toppo

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 27-11-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 21

Citation : (2019) 11 CAL CK 0092

Hon'ble Judges : Dipankar Datta, J; Moushumi Bhattacharya, J

Bench : Division Bench

Advocate : Krishna Rao, S.K.Mandal

Final Decision : Allowed

Judgement

The Central Administrative Tribunal, Calcutta Bench (Circuit Court at Port Blair) by its order dated 28th March, 2019 declined condonation of delay in presentation of OA 351/01897/2018, being an original application of the present petitioner. Aggrieved thereby, the writ jurisdiction of this Court has been invoked.

The petitioner was served with a charge-sheet dated 15th October, 2015. Upon due inquiry into the charge that was levelled against the petitioner, the inquiry officer returned the following finding:

"CONCLUSION

From the enquiry conducted so far and on the evaluation of the Prosecution brief as well as the Defense brief, I have come to the conclusion that the prosecution has not been able to prove the charges framed against the CO HC/237 Alias Toppo and that the allegation could not be substantiated. However, it has been established that business of illicit liquor was prevailed during the tenure of posting of CO HC/237 alias Toppos who was not able to curb the menace which resulted the origination of such a complaint against him."

The report of the inquiry officer was forwarded to the petitioner seeking his

comments thereon. Upon consideration of the petitioner's representation dated 18th January, 2015, the Superintendent of Police, North and Middle Andaman District, Mayabunder (being the disciplinary authority) passed a final order dated 4th February, 2016, whereby he imposed penalty on the petitioner. It was ordered that future increment of the petitioner for a period of one year, without cumulative effect, would be withheld and the period spent on suspension by the petitioner from 7th October, 2015 to 24th January, 2016 would be treated as not spent on duty for all intents and purposes.

The order of penalty was carried in appeal by the petitioner. By an order dated 31st August, 2015, the appellate authority upheld the order of the disciplinary authority and thereby rejected the appeal.

More than two years later, on December 18, 2018 to be precise, the appellate order including the order of penalty was challenged by the petitioner by presenting an application under section 19 of the Administrative Tribunals Act, 1985 before the Tribunal (OA 351/01897/2018). Since there was sufficient delay in presentation of such application, the petitioner had also applied for condonation of delay by presenting MA No.351/00936/2018.

In support of his prayer for condonation of delay, the petitioner averred that the entire records relating to the disciplinary proceeding initiated against him were in the custody of his defence assistant who had been to the mainlands. The said defence assistant initially promised to return to the islands soon but later, on a change of mind, decided to settle in the mainland. Despite repeated requests of the petitioner, the records were not returned to him on time. Ultimately, the petitioner was successful in obtaining the records from a relative of the defence assistant. For such reasons, the original application before the Tribunal could not be presented within the period of limitation prescribed in section 21 of the Act.

The order of the Tribunal passed on the application for condonation of delay does not take note of the explanation proffered by the petitioner; on the other hand, the Tribunal seems to have relied on the maxim '*vigilantibus, non dormientibus, jura subveniunt*' (law assist those who are vigilant not those who are sleeping over the rights)" and observed that there was no convincing reason to condone the delay.

The finding recorded by the Tribunal that it was not convinced by the explanation put forward by the petitioner does not appear to us convincing. The Tribunal did not call upon the respondents to controvert the averments made in the application for condonation of delay. In the absence of the statements in the application being controverted, we have failed to comprehend as to how a pleading supported by an affidavit could be disbelieved. If indeed the petitioner was disabled from approaching the Tribunal within the prescribed period of limitation owing to the reason that the records of the disciplinary proceeding were not in his custody but were in the custody of his defence assistant, who delayed return of such records to the petitioner, that in our view constitutes

sufficient cause for condoning the delay in presentation of the original application.

We, therefore, set aside the order of the Tribunal and allow MA No. 351/00936/2018. The original application shall be heard on merits by the Tribunal and an appropriate decision rendered on it in accordance with law.

Since the petitioner has already suffered the penalty imposed by the disciplinary authority, we expedite hearing of the original application by directing exchange of affidavits.

The respondents in the original application shall have six weeks time from date to file their reply-affidavit. Rejoinder thereto, if any, may be filed within two weeks thereafter. The petitioner shall be at liberty to mention the original application before the Tribunal for hearing immediately upon expiry of the period fixed above for exchange of affidavits.

We hope and trust that the Tribunal shall expeditiously dispose of the original application, subject to its convenience.

We make it clear that the merits of the petitioner's claim have not been examined and all points are left open for being urged before the Tribunal for a decision by it.

The writ petition stands allowed. There shall be no order for costs.