

(2021) 11 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9540 Of 2021

Prashant Kumar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 02-11-2021

Acts Referred:

Citation : (2021) 11 PAT CK 0008

Hon'ble Judges : Vikash Jain, J;Rajesh Kumar Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The following reliefs as formulated by the petitioner have been claimed in the writ petition-

"(i) For setting aside the order dated 03.01.2019 (Annexure-3 to W.P.) of Hon'ble Shri Jayesh V. Bhairavia, Member (Judicial) and Hon'ble Shri Dinesh Sharma, Member (Administrative) of Central Administrative Tribunal, Patna Bench, Patna passed in O.A. No. 050/00583/2015/ M.A.050/00263/2017, by which the learned Administrative Tribunal has been pleased to dismiss the O.A. of the petitioner and thereby to quash the reviewed Central Government administrative order dated 28.04.2015 (Annexure-2) confirming original major penalty order dated 30.08.2013 (Annexure-1 to W.P.), issued by the Ministry of Defence, Govt. of India, New Delhi whereby and where under a major penalty of withholding 2 (two) annual increments in the form of "reduction to 2 (two) stage lower in the time scale of pay" for 1 (one) year with non-cumulative effect has been imposed on the applicant and for further quashing order dated 30.08.2013 of the disciplinary authority (Annexure-1 to W.P.).

(ii) For any other relief/reliefs to which the petitioner be deemed entitled for".

3. At the very outset, learned counsel for the respondents raises a preliminary objection in para 6 of the counter affidavit to the effect that the present writ petition has been filed in the year 2021 against the impugned order dated 03.01.2019 of the Central Administrative Tribunal, Patna Bench, Patna, i.e. after the delay of more than two years and that too without disclosing any facts and details that proper procedure in the disciplinary inquiry was not followed nor a violation of any provision of law.

4. In reply, the petitioner has invited reference to para No. 16 of his rejoinder, as follows -

"16. That in reply to the statement made in paragraph 6 of the Counter Affidavit regarding the lapse of about two years in filing the instant writ application in this Hon'ble Court, it is most humbly submitted on behalf of the petitioner as follows :-

(i) That the petitioner's O.A. No. 583 of 2015 remained pending till 02.01.2019. In the meanwhile the petitioner was transferred in July, 2016 from Ordnance Factory, Nalanda to Ordnance Factory, Dehradun, Uttarakhand. This transfer of the petitioner did not come to the knowledge of his counsel. Later on, it was informed by the petitioner that he had lost his old mobile no. in which his counsel's contact number was saved and he (the petitioner) had to buy a new mobile with a different number. This is why there remained a communication gap between the petitioner and his counsel for long until he came this year to Patna on 24.01.2021. As a bad luck have it, all his family members including himself fell a prey to the first wave of CORONA in April, 2020. However, he recovered and came to Patna on the above-said date while on way home to his native village near Barh. He contacted his counsel who apprised him of the CAT order and handed over to him its certified copy. He immediately made up his mind to file a writ application against the said CAT order and appointed his counsels for the same. This is how the present writ was filed belatedly on 27.01.2021 having been registered on 29.01.2021 in this Hon'ble Court.

(ii) That the lapse of about 2 years in filing this case has been caused by the aforesaid unavoidable circumstances. Hence, it deserves to be condoned or ignored, as there is merit in the case and the petitioner is hopeful that it will succeed if entertained. He himself has not caused any intentional delays and is quite innocent in that context.

It is, therefore, prayed that the lapse pointed out by the respondents be graciously ignored or condoned by this Hon'ble Court as it has been caused under the aforesaid special circumstances without any intention and the petitioner being quite innocent".

5. We are not satisfied with the plea of the petitioner with respect to explanation of two years' delay in filing the writ petition. It appears highly unlikely that despite being transferred from Ordnance Factory, Nalanda to Ordnance Factory, Dehradun in July, 2016, no communication between the petitioner and his

counsel was possible for the next about five years. We are also not impressed with the vague stand of the petitioner that he had lost his old mobile phone in which his counsel's contact number was saved and he had to buy a new mobile with a different number. The relevant mobile numbers and the dates in this regard have not been stated in his explanation. It is well settled that an equity court comes to the aid of a diligent litigant. In the present case, the petitioner has not shown what steps he had taken to seek an update from his counsel with regard to this pending litigation before the CAT. We also take note that the writ petition does not contain any material whatsoever with respect to explanation for the period of delay, rather the same has been offered only after an objection in this behalf has been taken in the counter affidavit.

6. In view of delay and laches on the part of the petitioner which has not satisfactorily been explained, we are not inclined to interfere with the impugned order of learned CAT.

7. The writ petition accordingly stands dismissed.