

(2018) 01 DEL CK 0391

In the Delhi High Court

Case No : Civil Writ Petition No. 458 Of 2018, Civil Miscellaneous No. 1989 Of 2018

Sanjay Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 304A

Citation : (2018) 01 DEL CK 0391

Hon'ble Judges : Hima Kohli, J; Rekha Palli, J

Bench : Division Bench

Advocate : H.S.Dahiya, Vijay Joshi, D.D.Ram

Final Decision : Dismissed

Judgement

1. The petitioner is aggrieved by the order dated 01.02.2003, passed by the Disciplinary Authority i.e. respondent No.5/Senior Commandant, CISF, removing him from service, the order dated 24.10.2003, passed by the Appellate Authority i.e. respondent No.4/Dy.Inspector General, CISF, rejecting his appeal after the order of removal from service and the order dated 26.02.2010, passed by the respondent No.3/Inspector General, CISF, rejecting his mercy petition. The petitioner prays that he be reinstated in service from 01.02.2003, with all consequential benefits.

2. The facts of the case as elicited from the petition are that the petitioner was inducted in the CISF as a Head Constable (Driver) in the year 1998. On 14.02.2001, when the petitioner was driving an official vehicle in Chattisgarh, an accident took place which resulted in the death of a motorcycle rider. Apart from criminal proceedings initiated against him, a charged memorandum was issued to the petitioner on 28.03.2002, wherein two articles of charge were framed against him and an inquiry was conducted by the Inquiry Officer who submitted his report on 02.12.2002. After affording an opportunity of hearing to the

petitioner, the Disciplinary Authority passed the impugned order dated 01.02.2003, whereunder he concurred with the findings returned by the Inquiry officer and held the petitioner guilty on both the charges framed against him. Resultantly, a penalty of removal from service was imposed on the petitioner.

3. Aggrieved by the order dated 1.02.2003 passed by the Disciplinary Authority, the petitioner preferred an appeal before the Appellate Authority which was also dismissed vide order dated 24.10.2003. We may note that though the petitioner had the option of preferring a revision against the order of the Appellate Authority, but did not exercise the said option. Instead, after waiting for five and a half years, the petitioner submitted a 'mercy petition' before the respondent No.1/Ministry of Home Affairs, Union of India on 09.03.2009 which was rejected on 26.02.2010, with an observation that he had failed to avail of the statutory departmental remedy by preferring a revision against the Appellate order, within the prescribed period of six months and the matter being over five years old, there was no provision in the CISF Act and Rules for entertaining any mercy petition.

3. We may note here that much before the date he had preferred the mercy petition, vide order dated 31.12.2004, Chief Judicial Magistrate, District Dantewada, Chattisgarh had acquitted the petitioner in the criminal proceedings initiated for an offence punishable under Section 304A IPC and the said order had attained finality. Despite the said position, the petitioner did not take any steps for over five years, reckoned from 31.12.2004, the date of the judgment, to approach the respondents for relief. Even after the respondent No.1 had proceeded to reject the representation of the petitioner on 26.02.2010, it has taken him all of eight years to file the present petition. There is no explanation whatsoever for such an excessive delay in filing the present petition.

4. In view of the above facts and circumstances, we decline to exercise the extraordinary power vested in this Court under Article 226 of the Constitution of India, as the present petition is hopelessly barred by delay and laches.

5. The petition is accordingly dismissed in limine along with the pending application.