
(2018) 07 CAL CK 0127
In the Calcutta High Court
Case No : FMA 251 of 2016

Sanjoy Kumar Chakraborty

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 18-07-2018

Acts Referred:

Border Security Force Act, 1968 — Section 62
Limitation Act, 1963 — Section 5
Border Security Force Rules, 1969 — Rule 28A
Constitution of India, 1950 — Article 226

Citation : (2018) 07 CAL CK 0127

Hon'ble Judges : SANJIB BANERJEE, J; ABHIJIT GANGOPADHYAY, J

Bench : Division Bench

Advocate : Somali Mukhopadhyay, Bhudeb Chatterjee, Bijaylakshmi Sil

Final Decision : Dismissed

Judgement

It is alarming that with facts as blatant as in the present case, the appeal was not nipped in the bud and dismissed at the earliest stage.

This appellant effectively deserted the Border Security Force in June of 2000. He left his station of duty without informing his superiors or

obtaining any permission. Registered letters were issued by the relevant battalion on June 8, on June 15 and again on June 25, 2000 to the home

address of the appellant. In response, he submitted a letter dated July 5, 2000 to the Commandant of the

40 Bn alleging that he was suffering from acute liver problems. Upon receipt of the appellant's response, the authorities directed the appellant

to forthwith join his post by another registered letter of July 11, 2000. The appellant chose not to reply such letter or take steps within any

reasonable time to join his duties.

After more than 30 days of the appellant's absence without due authority, a court of enquiry was ordered in terms of Section 62 of the Border

Security Force Act, 1968. An apprehension roll was thereafter sent through the Superintendent of Police, Howrah with a registered letter dated

September 30, 2000. The appellant chose not to reply to such letter. A show-cause notice was next served on the appellant on or about October

3, 2000, affording the appellant a further 30 days to indicate the appellant's defence. It was at this stage that the appellant wrote a letter dated

October 15, 2000, claiming that the appellant was suffering from acute gastric problems and was on his way to recovery. The appellant also

represented that the appellant would join the duty with immediate effect.

Since the appellant did not join the duty till the end of the first week of November, a further show-cause notice dated November 8, 2000 was issued to

the appellant. In such circumstances, the court of enquiry was left with no option but to treat the appellant as a deserter and pass an order of

dismissal. Such order of dismissal was passed on December 11, 2000 and was, admittedly, served immediately on the appellant.

According to the appellant, he approached the Central Government under Rule 28A of the Border Security Force Rules, 1969 by a writing of January

3, 2001. The appellant also claims that subsequent letters were addressed to the Central Government in pursuance of the original representation, but

to no avail. The appellant does not indicate why no meaningful steps were taken by the appellant since or about the beginning of 2001 despite the

Central Government allegedly not acting on the appellant's representation under Rule 28A of the said Rules of 1969.

According to the appellant, the representation originally made on January 3, 2001 was disposed of by the Central Government by a

writing of October 8, 2010.

However, it is evident from the Central Government's letter of October 8, 2010 that such letter was issued in connection with a petition of May

21, 2010 filed by the appellant followed by subsequent letters or petitions of June 25, 2010 and August 26, 2010. It, therefore, is evident that the

appellant completely abandoned the original representation that may have been made on January 3, 2001 and it was only the 2010 representation that

was dealt with by the Central Government's writing of October 8, 2010.

Â Despite the Central Government furnishing cogent reasons for rejecting the appellant's plea for his reinstatement, the appellant did not

challenge the same or even his original order of dismissal around the time that the appellant's representation was rejected.Â Instead, sometime in

the year 2015, the appellant wrote a letter to the Prime Minister and carried a writ petition to this court in the year 2016 on the ground that the Prime

Minister had rejected the appellant's representation a few months prior to the petition being filed in this court.

By the order impugned dated October 15, 2015, the Single Bench held that there was a long, unexplained delay which disentitled the appellant from

approaching the writ court or obtaining any relief therefrom.Â It was also held that the irrelevant representation made by the appellant to the Prime

Minister and the predictable rejection thereof were no grounds to found the petition under Article 226 of the Constitution.

The appellant refers to a Delhi High Court judgment of October 19, 2006 in the matter of Jitender Singh vs. Union of India.

Paragraph 11 of the report is placed.Â The Division Bench of the Delhi High Court noticed that the initial steps taken against the appellant in that

case were erroneous and contrary to the principles of natural justice.Â In such circumstances, the delay of about seven years in approaching the

court was found to be irrelevant in the larger context.

The merits of a matter have nothing to do with the sufficiency of the grounds under Section 5 of the Limitation Act, 1963.Â It is often that courts get

swayed by the injustice of the situation to condone the delay and take up the matter on its merits.Â However, jurisprudentially,Â

there cannot be any justification of such approach.

In any event, the delay in the Delhi case was one of seven years and not of 16 years as in the present case and it is not evident from the order

impugned as to what grounds impressed the Delhi High Court to disregard the delay in that case.

In petitions under Article 226 of the Constitution, there is no prescribed period for limitation and the Limitation Act does not apply.Â However, by

judicial convention, delayed and belated matters or complaints are not entertained since the writ court exercises equitable jurisdiction and if a person

has slept over his rights, the writ court does not come to his aid.

In the present case, the appellant appears to have abandoned his post.Â The appellant was put on notice immediately after he left his post without permission and the appellant made at least two representations that he would join back within a few days, but did not do so.Â Two show-cause notices were issued to the appellant and the appellant did not reply to the second, following which the BSF authorities had no other avenue open to them but to conclude the proceedings and pass an order of dismissal.Â The order of dismissal was also not challenged before this court nor was the alleged representation to the Central Government made on January 3, 2001 pursued in any manner or form within any reasonable time.

In such circumstances, the order impugned does not call for any interference. In any event, the facts in this case are such that it does not appear that any injustice has been done to this appellant.

For the reasons aforesaid, FMA 251 of 2016 is dismissed with costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.