
(2018) 01 DEL CK 0382

In the Delhi High Court

Case No : Civil Writ Petition No. 9798 Of 2017

Subhash Chandra Mishra

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

Citation : (2018) 01 DEL CK 0382

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

Bench : Division Bench

Advocate : Ashwani Kumar Dubey, Prashant Umrao, Vishal Vishwadeesh, Ruchi Jain

Final Decision : Dismissed

Judgement

1. The petitioner has filed the present petition challenging an order dated 07.06.2017, passed by the respondent No.4/Commandant, CISF, dismissing his appeal against the order dated 06.05.2009 passed by the respondent No.5/ Assistant Commandant, CISF. The petitioner has also challenged the order dated 10.07.2017 passed by the respondent No.3/Deputy Inspector General, CISF, dismissing the review petition filed by him against the order dated 18.02.2012, passed by the Appellate Authority.

2. At the outset, learned counsel for the respondents opposes the petition on the ground that the same is hopelessly barred by limitation. She further states that the petitioner has mixed up the facts of two sets of enquiries held against him and the narrative in the writ petition is incomplete. Learned counsel explains that the first memorandum was issued to the petitioner on 28.03.2009 and the charge levelled against him therein was that he had sent an application directly to a Member of Parliament to sponsor his name for deputation to BHEL, Bhopal and had brought outside political influence to bear upon his Superior Authority to further his interests. On 05.5.2009, the petitioner had submitted a representation in response to the charge dated 28.03.2009. After perusing the same, the Disciplinary Authority had passed an order dated 06.05.2009,

imposing a penalty on the petitioner of "withholding of one future increment for a period of one year which will not have the effect of postponing his future increment of pay".

3. It is further stated by counsel for the respondents that though a statutory remedy of appeal is available under the CISF Act, the petitioner did not file any appeal against the order dated 06.5.2009, within the prescribed period of limitation or within a reasonable time. Instead, it took him eight years to do so, on 14.03.2017, which appeal was dismissed by the Appellate Authority on 07.06.2017, on the ground that the same was hopelessly barred by limitation extending upto 2868 days, reckoned from the date of receipt of the final order.

4. In the end of the year 2009, a second memorandum dated 12.12.2009 was issued against the petitioner, wherein he was charged with committing an act of impersonating and trying to use improper and fraudulent means for obtaining a transfer/deputation. The petitioner submitted a reply to the said charge memo on 07.01.2010, which was duly considered and an order dated 16.01.2010 was passed by the Disciplinary Authority, imposing upon him a punishment of "withholding of next salary increment which is payable on 01.07.2010 for a period of three years which will not have the effect of postponing his future increment". Aggrieved by the aforesaid order, the petitioner had preferred an appeal before the Appellate Authority, which was dismissed vide order dated 18.02.2012. After waiting for almost five years, the petitioner filed a revision petition against the order dated 18.02.2012, on 14.03.2017, which was dismissed by the DIG, CISF vide order dated 10.07.2017 on the ground that the same is time barred.

5. Instead of filing two separate petitions, one against the orders passed in respect of the charge memo dated 28.03.2009 and the other against the charge memo dated 12.12.2009, the petitioner has filed the present petition assailing different sets of orders passed in two different proceedings without clarifying the correct sequence of events in respect of the two separate set of disciplinary proceedings culminating in two different orders and completely omitting to explain the delay in each case in approaching the Court for seeking relief. Merely because the Appellate Authority had passed an order on 07.06.2017, dismissing the petitioner's appeal against an order dated 06.05.2009 passed by the Disciplinary Authority in the first memorandum, cannot be taken as a ground for explaining such a prolonged delay of eight years in filing an appeal. Fact of the matter is that the petitioner elected to file an appeal only on 14.03.2017. The said appeal was held to be hopelessly belated, having been filed after 2868 days from the date of receipt of the final order and was accordingly rejected.

6. As for the second memorandum dated 12.12.2009, the order passed by the Revisional Authority on 10.07.2017 simply records that as per the rules, a revision petition against a final order has to be filed within a maximum period of six months reckoned from the date of receipt of the final order and in this case, the final order was passed by the Appellate Authority on 18.02.2012 but the

petitioner had preferred the revision petition only after five years, on 14.03.2017. Therefore, for explaining the delay on his part, the petitioner cannot predicate his case on the order dated 10.07.2017 and brush aside the entire period between 18.2.2012, the date when the Appellate Authority had dismissed his appeal and March, 2017, when he finally filed a revision petition. No explanation worth the name has been offered by learned counsel for the petitioner to explain the delay of five years in approaching the Revisional Authority against the order dated 18.2.2012.

7. We are therefore of the opinion that the present petition is barred by excessive delay and laches that have remained unexplained. As a result, we decline to entertain the present petition which is dismissed in limine.