

(2009) 12 OHC CK 0016

In the Orissa High Court

Swapneswar Lenka

APPELLANT

Vs

The Security Officer, East Coast Railway and Another

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Limitation Act, 1908 — Section 5

Citation : (2010) 109 CLT 330 : (2010) 1 OLR 925 Supp

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The Petitioner in this Writ application inter alia prays as follows:

Therefore it is humbly prayed that your Lordship's would be graciously pleased to issue a Rule Nisi calling upon the Opposite Parties to show cause why Writ Petition will not be allowed by issuing mandamus or appropriate direction to reinstate the Petitioner in his former post of constable of R.P.F. (No. 5643) & regularizes the entire period of absence as leave due to the Petitioner & after setting aside the removal order (Annexure-1) or any other relief or reliefs to which the Petitioner is entitled to.

2. Annexure-1 is the Order Dated 22nd February 1991 intimating the Petitioner that he has been held guilty of the charges for remaining absent unauthorisedly without intimation & is deemed to have been removed from service w.e.f. 29th January, 1991, i.e. the date of pasting of the removal notice.

3. Bereft of unnecessary details, the short facts leading to filing of the aforesaid Writ application are as follows;

4. Petitioner was appointed as a Constable in Railway Protection Force w.e.f. 13th May 1967 & was allotted No. 5463. He was confirmed in the said post w.e.f. 4th July 1970 & was posted at Khurda Division. While discharging his duties he suffered from serious Neurological & Neurosurgical disorder, consequently he

remained absent without intimation. After waiting for some time a Departmental Proceeding was initiated against him & he was directed to submit his preliminary show cause. It appears though the said notice was received no show cause was filed by the Petitioner. Consequently, charges were framed alleging gross indiscipline & unauthorized absence. Sri B.N. Dutta, RPF Inspector, was nominated as Enquiry Officer to conduct the enquiry & the Petitioner was called upon to show cause. The Enquiring Officer conducted the enquiry after granting adequate opportunity to the Petitioner to defend his case. He completed the enquiry & submitted his findings holding the Petitioner guilty of all the charges/ The Disciplinary Authority after going through the findings of the Enquiry Officer, evidence on record & the conclusions arrived at by the Enquiry Officer recommended the matter to the higher authority, who was competent to impose major penalty. After considering all facts & circumstances & coming to the conclusion, that the Petitioner was unfit to be retained in the post, the authority removed the Petitioner from service w.e.f. 29th January 1991.. Being aggrieved by the said order the Petitioner approached this Court after five years in OJC No. 1360/1996. The said Writ application was disposed of on 25.4.1996 giving liberty to the Petitioner to prefer an appeal. Thereafter, it appears the Petitioner filed an appeal in the year 1996. The Appellate authority after due consideration of the charges & on being satisfied that the enquiry was conducted after granting adequate opportunity to the Petitioner & the fact that the appeal was preferred more than four & half years after the order of removal was passed & that the same was not accompanied by any petition u/s 5 of the Indian Limitation Act to condone the delay, dismissed the appeal on 6.12.1995. Being aggrieved the Petitioner has approached this Court.

5. According to Learned Counsel, the Appellate authority should have considered the appeal on merits & dismissal of the same on the ground of limitation was unjust & improper. It is further submitted that the Petitioner suffered from mental disorder & was not in a position to take part in the Departmental Proceeding. This aspect was not kept in mind by the authorities concerned.

6. After receiving Rule, a counter affidavit has been filed on behalf of the Opposite Parties taking the stand that the Petitioner had violated Rule 147 of the RPF Rules, 1987 by remaining absent unauthorisedly & such action construed to be gross indiscipline. It is further submitted that after serving notice & calling or explanation the authorities initiated departmental proceeding. Unfortunately the Petitioner did not avail the opportunity nor took part in the proceeding. Consequently, the Enquiring Officer had no other option but to proceed with the enquiry & after examining necessary documents & oral evidence & on being satisfied that the Petitioner had grossly violated the Rules passed an order of dismissal. In the counter affidavit, it is further averred that the Petitioner was occupying a Government quarter & the notice issued as well as the final order passed was served at the quarters which the Petitioner was occupying. The allegation that the Petitioner suffered from mental disorder is denied mainly on the ground that the Petitioner had never reported before the Railway Hospital.

7. In course of hearing, Learned Counsel for the Petitioner, reiterating the stand taken in the Writ application, submitted that the authorities without granting any opportunity to the Petitioner proceeded with the hearing *ex parte* & imposed major punishment & that the Appellate authority also without properly appreciating the facts & circumstances dismissed the appeal on the ground of limitation & it is a fit case where the punishment imposed should be set aside.

8. Heard Learned Counsel for the parties at length, perused the pleadings meticulously & considered all the matters diligently. Admittedly, the Petitioner is a member of a disciplined service. He absented himself from duties without prior intimation & without availing leave, such absence amounts to misconduct. Further, admittedly a Departmental Proceeding was initiated against the Petitioner, but then he did not take part in the proceeding. It is submitted that the Petitioner was suffering from mental derailment & he was not in a position to attend the enquiry. Be that as it may, the Enquiring Officer after observing all paraphernalia submitted a report holding the Petitioner guilty. The Disciplinary authority after considering the said enquiry report imposed punishment of dismissal in the year 1991. Unfortunately, the Petitioner did not assail the final order passed by the Enquiry Officer in an appeal. In this Writ Petition also he has not assailed the order of punishment nor annexed the relevant orders, he has only prayed to quash the order dtd. 22nd February, 1991 (Annexure-1) by which he was intimated that in consonance with the orders passed in the Departmental Proceeding he has been removed from service w.e.f. 29th January 1991. The said order is only consequential to the order passed in the Departmental Proceeding. It is well settled that in the absence of the order passed by the Departmental authority and/or in the absence of order passed by the Enquiring Officer, which are not annexed to the Writ Petition, no effectual decision can be taken in this Writ Petition.

9. That part, admittedly the Petitioner preferred an appeal in the year 1995, i.e. more than four years after the date of removal. The memorandum of appeal was not accompanied with any petition u/s 5 of the Indian Limitation Act, with a prayer to condone the delay. The Appellate authority has rightly observed that in absence of any averment explaining the delay, the same cannot be condoned.

10. After going through the Appellate order, this Court finds no infirmity or illegality therein. It appears that the Petitioner has also not prayed to quash the Appellate order. That apart, the question that arise for consideration is, regarding the scope of judicial interference in the matter of the orders passed in the Departmental Proceeding. The parameters of the Courts power to interfere with such order has been analyzed by the Supreme Court in number of cases & it has been held that only if the order or decision is found to be perverse or is shocking to the common-sense or it is found that the authority has misdirected himself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters, the Court would be justified in interfering with the same.

11. It is not open to the Court to enlarge the time allowed by law on equitable

grounds. In other words, the period of preferring an appeal cannot be extended simply because the Appellant's case is a hard one & calls for sympathy, nor the Court can extend the period of limitation merely out of benevolence to the party seeking the relief. The Court granting indulgence must be satisfied that there was diligence on the part of the Appellant & that he was not guilty of any negligence whatsoever. Sufficient cause shown must be beyond the control of the party, praying for condonation of delay. The cause for delay, which a party could have avoided by exercise of due care & attention or caution, cannot be treated as sufficient cause.

12. In the case in hand, the Petitioner was occupying a Government quarter. Notice of the disciplinary proceeding was served in his quarter. He did not file any show cause nor took part in the proceeding. After observing all paraphernalia, enquiry officer submitted a report holding the Petitioner guilty of the charges, The disciplinary authority on being satisfied, referred the matter to the authority, who had the power to impose major punishment. The higher authority also after being satisfied that charges have been established beyond all reasonable doubt & were serious in nature, imposed punishment of dismissal. All the exercise was completed way back in the year 1991. The order was also communicated to the Petitioner at his quarter. The Petitioner did not assail the same. Thereafter, the Petitioner was intimated with regard to his service particulars by Annexure-1. After receipt of the aforesaid order also the Petitioner did not prefer any appeal till the year 1995, i.e. for more than four years. He filed an appeal in, the year 1995 without explaining the reasons for delay. Then he approached this Court with a prayer to direct the Appellate authority to dispose of the appeal. The Appellate authority dismissed the appeal as barred by time. The aforesaid facts reveal that the Petitioner was not diligent in his approach & as such, deserves no sympathy.

13. Perusal of the order passed by the Appellate authority as well as the facts stated in the counter affidavit & the documents annexed thereto give an impression that the order impugned does not suffer from any infirmity nor there is any error apparent on the face of the record. That apart, neither the order passed by the Departmental Authority nor the order passed by the Appellate authority is assailed in this Writ application. The Petitioner, as it appears, by efflux of time has crossed the age of superannuation. Even otherwise, the delay in filing the Writ Petition has also not been explained. Taking a cumulative assessment of all the facts & circumstances, this Court finds that it is not a fit case where the order passed by the Departmental authority way back in the year 1991 which was confirmed in the year 1996 needs any interference.

The Writ application is accordingly dismissed.

B.N. Mahapatra, J.

14. I agree.