

(1993) 07 CAL CK 0055

In the Calcutta High Court

Case No : Appeal from Original Order (Tender) No. 1728 of 1991

Union of India (UOI) and Others

APPELLANT

Vs

Sukh Ram Singh alias S.R. Singh

RESPONDENT

Date of Decision : 19-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (1994) 1 CALLT 228

Hon'ble Judges : Bhagabati Prosad Banerjee, J; Ashoke Kumar Chakravorty, J

Bench : Division Bench

Advocate : R.C. Ghosh, for the Appellant; Kalyan Bandopadhyay, for the Respondent

Final Decision : Allowed

Judgement

Bhagabati Prosad Banerjee, J.—This is an appeal against the Judgment and Order dated 3rd April, 1991 passed by the learned trial Judge. By the said judgment and order the learned trial Judge was pleased to direct the appellant to start afresh from the state of filing of the report of enquiry in accordance with the law after following certain procedures which were directed to be complied with in terms of the order of the learned trial Judge. The fact of the case in short is that the charge sheet as issued against the writ petitioner/opposite parties in the year 1976 and on the basis of the said charge sheet an enquiry was held and ultimately he was removed from service by an order dated 5th November, 1976. The writ application was moved before the learned trial Judge on 19th April, 1990. Admittedly, there was a delay of about 14 years. In order to explain the delay it was pointed out that the appellate order was passed on 16th February, 1990 and as such the question of delay should be ruled out.

2. The Chief Security Commissioner/R.P.F. rejected the appeal on 14th February 1990. After the same was entertained and rejected by observing "After a lapse of about 13 years i months the said R.K. (now Const.) was preferred a representation dated Nil which has been received in this office on 16.1.90. The

main point raised by the petitioner to defend his case, is that he was sick w.e.f. 4.11.76. But from the record it is revealed that he acknowledged the copy of D.O. referred to above on 22.11. 76. Hence it is clear that the plea of his sickness is fabricated later on. He did not avail of the challenge as laid down in the R.P.F.D. & A Rule willingly. Hence I do not find any good ground to interfere with the order already passed. The time barred petition is therefore rejected. The learned trial Judge held that the order of the removal was totally unfounded by any reason and that the same did not disclose the case, discuss the report of enquiry and disclose the reasons for agreeing with the report of the enquiring officers. It was further observed that it did not discuss anything excepting the fact that the writ petitioner opposite party was removed from the service with effect from November 6, 1976. On the question of delay the learned trial Judge held that as the appellate order was passed on 16th February, 1990 the writ application was not barred by principle of delay.

3. The learned trial Judge relied upon the decision of the Supreme Court in *P.B. Roy Vs. Union of India (UOI)*, , in that case before the Supreme Court the representation of the appellant was first rejected on July 25, 1969 and that the petitioner could not approach the court as he was admitted to Tuberculosis Clinic in June 16, 1961 and therefore was a delay between July 29, 1960 and June 1961. The High Court rejected the writ application on the grounds of laches. In that connection the Supreme Court noted with the Full Bench decision of Punjab High Court [*S. Gurmeh Singh v. Election Tribunal, Gurdaspur (1964) PLR 589*] wherein it was held that the delay in filing the petition was overlooked on the grounds that after the admission of a writ petition and hearing of arguments, the rule that delay may defeat the rights of a party is relaxed and need not be applied if his case is positively good.

4. Supreme Court in the case of *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, held that "it could have been the intention that this Court would go into stale demands after a lapse of years. It is stated that Article 32 is itself a guaranteed right. So, it is, but it does not follow from this that it was the intention of the Constitution makers that the court should discard all principles and grant relief in petition after inordinate delay."

5. In *Kamini Kumar Das Choudhury Vs. State of West Bengal and Others*, , it was held by the Supreme Court that "it is imperative, if the petitioner wants to invoke extra-ordinary remedy available under Article 226 of the Constitution of India that he would come to the court at the reasonable possible opportunity."

6. In *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, the Supreme Court held that "it appears to us, however, that the maximum period fixed by the legislature as the time within which relief by a suit in a civil court must be brought ordinarily be taken to a reasonable standard by which delay in seeking relief under Article 226 can be measured. This court may consider delay unreasonable even if it is less than a period of limitation prescribed a civil action for the remedy. But the delay is more than this period it will almost always be

proper for the court to hold that is unreasonable." Similar view was taken by the Supreme Court in M.K. Krishnaswami v. Union of India AIR 1977 SC 1168; R.S. Makashi and Others Vs. I.M. Menon and Others, ; Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, ; Malcom Lawrence Cecil D'souza Vs. Union of India (UOI) and Others, ; S.S. Moghe v. Union of India, AIR 1981 SC 1495; Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others, ; State of Orissa Vs. Pyarimohan Samantaray and Others,

7. On the merits also we do not find any extra-ordinary case which calls for exercising discretion over-riding the inordinate delay inasmuch as it is well settled that when the disciplinary authorities agree with the findings of the enquiring officer, the enquiring officer had not record reasons. As soon as the disciplinary authority agrees he agrees with the entire findings. The appellant in support of his case of delay stated that he was suffering from mental disease and produced certain certificates. The authenticity of the certificate is not beyond doubt. In any event as a member of Armed Forces suffering from mental disease is very fatal and a person cannot be provided with powers to use arms as a member of disciplined force. Arms in the hands of a person who has become a mental patient is more fatal. Delay of 14 years is inordinate. The explanations are not sufficient and cannot be accepted. We are unable to agree with the findings of the learned trial Judge that as the appellate order was passed on 16th February, 1990 that period of limitation will start from the date of the appellate order. The appellate authority did not decide the appeal on its merit but rejected the same stating to be a time barred appeal. The records of this case were produced before us and from the records it appear that the proceeding was conducted ex parte. The writ petitioner opposite party received the second show cause notice along with all the annexures but failed to submit any reply. There had been no violation of the principles of natural justice on the grounds aforesaid. We are of the view that the learned trial Judge was wrong in entertaining the writ application after a lapse of 14 years from the date of the removal.

8. In the absence of any sufficient and cogent material on record for explaining this long and inordinate delay and on the basis of the principles laid down by various law of the Supreme Court referred to above, we are unable to agree with the view express by the learned trial Judge. The inordinate delay in filing the Writ application could not be condoned on any ground.

9. Accordingly, the order of the learned trial Judge dated 3rd April, 1991 is set aside and the Writ petition is rejected on the ground of delay. Appeal is accordingly allowed without any order as to costs.

Let a Xeroxed copy of the above order be given to the parties on the usual undertaking.

A.K. Chakravorty, J.

I agree.