

GAHC010191982022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/124/2023

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, HOME
DEPARTMENT, NEW DELHI 01

2: THE DIRECTOR GENERAL OF POLICE

CRPF
NEW DELHI

3: THE DY. INSPECTOR GENERAL OF POLICE

RANGE HEAD QUARTER
CRPF
BHUBANESWAR ORISSA

4: THE COMMANDANT

39 BATTALION
CRPF
NEW POLICE LINE
NARAYANPURCHATTISGARH

5: THE DY. INSPECTOR GENERAL OF POLICE

CRPF
P.O.AMERIGOG
NINE MILE
DIST KAMRUP

6: MISS G.L. BHUTIA

ENQUIRING OFFICER
ASSTT. COMMANDANT

O.C.E/39 BATTALION
CRPF
NEW POLICE LINE
NAYANPUR CHATTISGAR

VERSUS

MUKUL DAS.
CONSTABLE NO. 041705426 C.T (G.D)
S/O LATE HARI KANTA DAS,
RESIDENT OF VILLAGE BHIMPURA BALIJAN, PS BOGINADI, DIST
LAKHIMPUR, ASSAM 787032

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : MR. K N CHOUDHURY, Sr. Advocate

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 13-09-2023

(S.P. Khaund, J)

- 1.** Heard Mr. A.K. Dutta, learned CGC for applicants/appellants and Ms. R.R. Kakati, learned counsel for the sole respondent Sri Mukul Das.
- 2.** By this application u/s 5 of the Limitation Act, 1963 the applicants herein - appellants have prayed for condonation of delay of 57 days occasioned in preferring the connected writ appeal.
- 3.** The applicants have preferred an appeal against the impugned order dated 20.06.2022 passed by the learned Single Judge in WP(C) No. 5843/2010. The opposite-party herein - respondent, who was a Constable in the 39th Battalion, Central Reserve Police Force (CRPF for short) was dismissed from service w.e.f.

15.01.2010 when he failed to resume duties following paternity leave. The opposite-party preferred an appeal against the order of dismissal but his appeal was dismissed by the Deputy Inspector General of Police. This impelled the opposite-party to file a writ petition which was registered as WP(C) No. 5843/2010. The impugned order dated 20.06.2022 was passed in WP(C) No. 5843/2010, remanding back the matter to the disciplinary authority/applicants, affording liberty to proceed against the writ petitioner/respondent by following the procedure of law as laid down by the Hon'ble Supreme Court in *Nelson Motis Vs UOI*, reported in (1992) 4 SCC 711, thus allowing the writ petition. The applicants decided to prefer an appeal against the afore-mentioned order. The applicants on receipt of direction from the higher authorities of the CRPF, collected the file of the writ petition from their previous legal counsel and the file was handed over to another Advocate-CGC for preparing the Memo of Appeal. The copy of the Memo of Appeal was then forwarded to the higher authority of the CRPF for approval. This process caused the delay of 57 days in filing the connected writ appeal. The delay was caused by circumstances beyond their control and there was no negligence on their part in filing the connected writ appeal.

4. The opposite-party filed affidavit-in-opposition as well as a rejoinder affidavit contending *inter alia* that as per Chapter-V-A of the Gauhati High Court Rules, an appeal is required to be filed within 30 days and the question of delay arises only after the said prescribed period. The applicants have failed to explain in detail the delay, after a lapse of 30 days in the instant case. It is contended that the applicants are required to explain the delay relating to each day, after the period of limitation, but the applicants tried to explain the delay within the prescribed period of 30 days of limitation, although the delay in question did not

commence during the said period. It is averred that the applicants have miserably failed to explain properly the delay of 57 days which occurred in preferring the connected appeal.

5. We have given our thoughtful consideration to the submissions at the Bar.

6. The learned counsel for the applicants through his argument has denied the contention of the respondents that they have applied for the certified copies of the judgment and order dated 20.06.2022 after the period of limitation. The applicants have denied wilful negligence in filing the connected appeal. It is submitted that immediately after the order dated 20.06.2022 was passed, the Pairvi office of CRPF i.e NES/Pairvi Cell of GS GTY vide signal No. J.II-95/2010-NES-Pairvi dated 24.06.2022 (Annexure-H) communicated and forwarded the downloaded copy of the judgment and order dated 20.06.2022 to the Higher Authority i.e. DIG (Law), Director General, CRPF for examination of the judgment dated 20.06.2022. Thereafter, the learned Government Advocate submitted his petition referring the matter vide his letter dated 13.06.2022 to the DIG for Police, CRPF, Guwahati which was again forwarded to the higher authority at New Delhi by the NES Pairavi Cell at GC, Guwahati vide signal letter dated 02.07.2022. After approval from DG CRPF, New Delhi on 18.07.2022, the matter was referred to the Ministry of Law and Justice. The matter was examined by the Additional Legal Advisor, Ministry of Law and Justice, New Delhi and vide his order dated 20.07.2022, he directed the administration department of CRPF to prefer the connected appeal. In this manner every day's delay has indeed been explained by the applicants. It is argued that unless approved by higher authority, i.e. DG, CRPF as well as by the Ministry of Law and Justice, Government of India, the applicants have no authority to take a decision to prefer an appeal against any order of this Court. It is thereby

submitted by the applicants that as there was no wilful negligence on the part of the applicants, the prayer for condonation of delay may be allowed.

7. It has been vehemently and fervently argued by the learned counsel for the opposite-party that the applicants have stated that, pursuant to the approval received from the higher authorities, the Government Counsel was requested to prefer an appeal against the impugned judgment and order dated 20.06.2022. However, the applicants have miserably failed to explain properly the delay of 57 days. It is contended that the statement of the deponent for the applicant in para 4 of the IA No. 124/2023 that after receiving the impugned order dated 20.06.2022, he himself forwarded the said judgment and order to the higher authority for necessary action is contradictory to his statement at para 4 of his affidavit-in-reply that Pairvi office of CRPF i.e NES/Pairvi had made a communication along with the downloaded copy of the judgment and order dated 20.06.2022, on 24.06.2022. The opposite-party has prayed to dismiss the petition as sufficient cause has not been shown justifying the applicant's stance.

Consideration of Submissions

8. The information regarding forwarding the judgment and order dated 20.06.2022 passed in connection with the Writ Petition No. 5843/2010 is marked as Annexure-B and Annexure-C which clearly reveals that the judgment and order was downloaded and forwarded on 24.06.2022 by the Deputy Commandant [Law] NES. The argument of the opposite-party that the certified copies were obtained by the applicants after 30 days i.e. beyond the period of limitation holds no water. The copies of the judgment have already been downloaded by the applicants on 24.06.2022 i.e. four days after the date of judgment and order. No wilful negligence on the part of the applicants is discernable. The prayer of the opposite-party to reject the application u/s 5 of

the Limitation Act as the certified copies were obtained after the period of limitation is not accepted.

9. In relation to condonation of delay, the law laid down by Hon'ble the Supreme Court in *Collector Land Acquisition, Ananatnag v. Katiji*, reported in *AIR 1987 SC 1353*, holds the field. It has been held and observed by the Hon'ble Supreme Court that:-

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that the cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalise on technical grounds but because it is capable of removing injustice and is expected to do so."

10. In the case at hand, it could be culled out that the applicants have shown sufficient cause which occasioned the delay of 57 days in preferring the accompanying appeal. Through the grounds set out in the petition and the affidavit-in-reply the applicants have elaborated the reasons which resulted in the delay of 57 days in preferring the connected appeal. In the light of the decision of the Hon'ble Supreme Court in *Collector L A Ananatnag's case (supra)*, a pragmatic view is taken. As sufficient cause has been shown for condonation of delay, without dismissing the case at threshold, petition is

hereby allowed and the delay of 57 days is condoned.

11. Registry shall register the connected appeal.

12. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant