

Neutral Citation No. - 2023:AHC-LKO:69492-DB

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 827 of 2023

Appellant :- Awadh Ram Yadav

Respondent :- Union Of India Thru. Secy. Ministry Of Home Affairs , New Delhi And Others

Counsel for Appellant :- Surendra Pratap Singh

Counsel for Respondent :- A.S.G.I.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

(C.M. Application No. 1 of 2023 : Application for Condonation of Delay)

- (1)** Heard Shri Surendra Pratap Singh, learned Counsel representing the appellant and Shri Surya Bhan Pandey, learned Senior Advocate/Deputy Solicitor General of India assisted by Shri Varun Pandey, representing the respondents/Union of India.
- (2)** There is delay of 163 days in filing the special appeal. The appeal is accompanied with an application for condonation of delay supported by an affidavit.
- (3)** Learned Counsel representing the respondents/Union of India does not have any objection, if delay in filing the instant appeal is condoned and the matter is heard on merits.
- (4)** Cause shown in the affidavit filed in support of application for condonation of delay is satisfactory and in absence of any

objection, application for condonation of delay is **allowed** and delay in filing the special appeal is hereby condoned.

Order on Appeal

- (5) By means of this *intra Court* appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, the appellant seeks to challenge the judgment/order dated 05.04.2023 passed by the learned Single Judge, whereby Writ-A No. 2888 of 2010 filed by the appellant has been dismissed.
- (6) Apparently, by filing the writ petition, the appellant prayed for quashing of the order dated 04.09.2008 by which his representation for reinstatement in service was rejected and further he prayed for a direction to be issued to the respondents to reinstate him on the post of C.P. in CRPF Chandauli with back wages. Thus, the claim put forth in the writ petition filed in the year 2010 was that he was suffering from illness from 04.05.2006 to 06.09.2006 and the doctor had advised him for complete rest, however, since the department had completed the enquiry and ordered him to join his duty, therefore, in spite of suffering from illness, he joined his duty on 30.08.2006, but due to increasing illness, he returned to his home on 31.08.2006 without intimation to the concerned officer and immediately after returning from duty on 11.09.2006, he again went through the medical check-up and the doctor advised him for further rest till 10.12.2006. When his illness was not improved, he

again went to medical check-up on 05.01.2007 and 30.04.2007 and the doctor advised him to take complete rest till 13.05.2008. On 15.05.2008, he got fitness certificate and he immediately thereafter reported for duty on 15.05.2008, however, he was not permitted to join the duty and as such, he had submitted applications dated 15.05.2008 and 30.08.2008 seeking to reinstate him in service, which were rejected vide order dated 04.09.2008 and the same was challenged in writ petition before the learned Single Judge.

(7) Learned Single Judge has considered the aforesaid prayer and has opined that the appellant/writ petitioner was not vigilant towards his service inasmuch as when his appeal against the order of dismissal was allowed and he was ordered to be reinstated in service vide order dated 30.08.2006, though he came to join on 30.08.2006, however, on 31.08.2006, without intimation to the concerned officer, he left the job and did not intimate about his illness to the department including the medical leave application. Learned Single Judge has, accordingly, dismissed the writ petition on the aforesaid ground.

(8) In **State of Meghalaya Vs. Mecken Singh N. Marak** : (2008)

7 SCC 580, the Apex Court held as under :-

“In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of

punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice”

- (9) In Union of India Vs. Dwarka Prasad Tiwari : (2006) 10 SCC 388,** the Apex Court held that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal, there is no scope for interference. When a member of the disciplined force deviates to such an extent from the discipline and behaves in an untoward manner which is not conceived of, it is difficult to hold that the punishment of dismissal as has been imposed is disproportionate and shocking to the judicial conscience.
- (10) In Shri Romi Kumar Vs. Union of India : 2022 SCC OnLine Mani 406,** the Apex Court took note of the ratio laid down in **State of Meghalaya v. Mecken Singh N. Marak (supra)** and

in **Union of India v. Dwarka Prasad Tiwari (supra)**, observed in paragraph-25 as under :-

“25. As stated supra, the petitioner being a member of CRPF, high level discipline is required to be maintained by him. The petitioner has admittedly failed to maintain the discipline and had done grave misconduct. The proved charges clearly establish that the petitioner, who was a member of disciplined force failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his act of overstaying of leave without permission was prejudicial to the department. Therefore, this Court, is not inclined to interfere with the punishment imposed by the disciplinary authority.”

- (11) Keeping in mind the aforesaid legal proposition and having regard the facts and circumstances of case as well as reasoning given by the learned Single Judge while dismissing the writ petition, we do not see any reason to interfere in the judgment/order dated 05.04.2023 passed by the learned Single Judge, which is under appeal herein for the reason that even in the special appeal, the appellant has utterly failed to explain us as to why he has not sent any application for extension of leave to the concerned authority when he was ill and when the doctor advised him to take complete rest, however, on the contrary, he, without any intimation, remained absent from duty for a period of 161 days, meaning thereby the appellant was not vigilant to his service and as such, the learned Single Judge has rightly observed that the appellant was disentitled to get any relief in

exercise of discretionary power under Article 226 of the Constitution of India.

(12) We completely agree with the reasoning given by the learned Single Judge while dismissing the writ petition filed by the appellant.

(13) The Special Appeal is, accordingly, **dismissed**.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 19.10.2023

Anand/Ajit/-