

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5587 of 2015

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Rakesh Kumar Singh (Ex-Senior Assistant, C.P.) s/o Late Subash Singh
resident of village + P.O. Balua via Nimez, District Buxar.

.... Petitioner/s

Versus

The Union of India through its Secretary,

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Narayan Singh-1, Adv

For the Respondent/s : Dr. Punam Kumari Singh C.G.C

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 10-04-2015 Heard learned counsel for the parties.

This Court is really amazed with the audacity that
the petitioner can have for filing this writ application.

Way back the petitioner was transferred on
06.02.2004, while working as Senior Assistant
(Computer Programmer), from Shillong to Dehradun.
The petitioner did not comply the transfer order and
instead filed T.S. No. 9(T) of 2004, in the Court of
Assistant Deputy Commissioner at Shillong for staying
the transfer order. The petitioner did not succeed in his
litigation before the Civil Court. The petitioner
thereafter also did not join on the transferred post and as
such was subjected to a departmental proceeding on the



basis of memo of charge dated 26.12.2005. The departmental proceeding was held and the petitioner after being afforded all reasonable opportunity including supply of the inquiry report was dismissed from service on 28.08.2006. It has also to be noted that the petitioner was governed by the Rules of National Project Construction Corporation Limited, had to file his appeal within the prescribed period of 90 days. There is nothing on record to show that the petitioner has filed an appeal within the prescribed period.

It now transpires from the reading of the present impugned order dated 25.09.2013, that the petitioner had filed some representation claiming payment of salary and other allowances from retrospective date and that representation was also rejected on 15.12.2011. Thereafter, the petitioner had filed yet another representation and that has been disposed of by the impugned order dated 25.09.2013, recording that the petitioner's dismissal from service on 28.08.2006 and



appeal dated 27.05.2010, had already been dismissed whereafter there was no question of considering the grievance of the petitioner either for payment of salary or for other financial assistance. By this order dated 25.09.2013, which has been sought to be assailed by filing this writ application on 09.04.2015. Learned counsel for the petitioner submits that the petitioner is prepared now to join at his transferred post and therefore, this Court should direct the authorities of the N.P.C.C.L to accept his joining. This Court fails to understand as to how the event of the year 2006, which got concluded after rejection of the appeal, can be reopened by the petitioner in this casual manner. It is for some purpose the service jurisprudence lays down certain time limit for either assailing the order of punishment or the exercise of power under Article 226 of the Constitution of India can be made within the reasonable period. Had the petitioner like assailing in the earlier transfer order filed a suit even that should not



have been maintainable on account of expiry of period of three years from the date of cause of action being the order of dismissal. This Court therefore, will find no reason to give indulgence to a person who has slept over his rights.

Even otherwise, learned counsel for the petitioner could not satisfy that there was any procedural error going to the root of the matter in the matter of departmental proceeding. The petitioner admits that he was given a transfer order but he did not comply it. Non compliance of the transfer order, by itself is a misconduct on which the employer can take action and remove the employee from service. This Court therefore, also does not find any error in the dismissal order passed by the authorities of the N.P.C.C.L after following the prescribed procedure including holding of departmental proceeding.

Learned counsel for the petitioner even submits that the petitioner's dues of contributory provident fund



(CPF) should be directed to be paid. The petitioner was beneficiary of CPF. The scheme of CPF itself envisages that certain amount has to be contributed by the employee and also equal amount by the employer. It would be of such contributory fund in which the employer is however also binding to contribute on the satisfactory service of the employee. In this case if the petitioner has been dismissed from service on certain misconduct, he will not be entitled for the amount of CPF. Nonetheless, thereafter the amount which was deducted from the salary of the petitioner and deposited in the CPF that being his own salary, he must be paid that amount if it has not been paid as yet, the same must be paid to the petitioner within a period of three months from the date of receipt of this order.

Subject to the aforementioned observation and direction, this writ application fails and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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