

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1562 of 2015

In
Civil Writ Jurisdiction Case No. 13697 of 2008

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Brahmdeo Sharma, S/o Late Madhusudan Sharma, resident of village - Bari Nakki, P.S. Chhoti Nakki, District - Bhagalpur at Present Posted as Mohararir, Survey Settlement Office, Bhagalpur. Appellant/s

Versus

1. The State of Bihar through the Secretary, Revenue and Land Reforms, Secretariat, Patna
 2. The Director, Survey and Record Department of Revenue, Govt. of Bihar, Patna
 3. The Survey Settlement officer, Bhojpur, Ara
 4. The Survey Settlement officer, Bhagalpur Respondent/s
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Appearance :

For the Appellant/s : Mr. Gajendra Kumar Jha, Advocate
Mr. Abhay Kumar Jha, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, GA-2
Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 24-08-2017 This appeal has been filed seeking exception to an order dated 30.04.2015 passed by the writ Court in C.W.J.C. No. 13697 of 2008. Even though the copy of the Memorandum of Appeal has not been served to the counsel representing the State Government, looking to the short question involved in the matter, we request Mr. Vinay Kirti Singh, GA-2, to take notice on behalf of the State Government.

We have heard learned counsel for the appellant and the State and dispose of the appeal in the following terms:

The writ petition in question was filed by the



petitioner challenging the order dated 07.11.2002 and 12.11.2003 (Annexures-2 and 8 in the record of the writ petition) by which the disciplinary authority and the appellate authority have dealt with the question of imposing punishment on the petitioner i.e. stoppage of two increments with cumulative effect.

Facts, in nut shell, indicate that the petitioner went to his village for availing of leave and when he did not return to report duty in time, on account of which he was held to have committed misconduct and a charge-sheet was issued to him, a departmental enquiry conducted and based on the findings recorded on 07.11.2002, punishment of stoppage of two increments with cumulative effect and break in service for the period of absence was imposed. Immediately on the receipt of the aforesaid punishment order, the petitioner took legal advice and also filed an appeal before the competent appellate authority and the appellate authority dismissed the appeal by order dated 12.11.2003 (Annexure-9) only on account of the fact that there is a delay of 28-29 days and the delay has not been properly explained.

When the petitioner challenged the action before the writ Court in the year 2008, the writ Court also dismissed the writ petition by holding that for condoning the delay of 28 days in filing the appeal before the appellate authority, no application for



condonation of delay was made.

We are of the considered view that in a service matter pertaining to stoppage of two increments with cumulative effect and break in service, merely because there is delay of 28 days in filing the appeal before the departmental authority, the writ Court should not have dismissed the writ petition filed by the petitioner. On the contrary, endeavour should have been made in the interest of justice to decide the matter on merit. This having not been done, which is required to meet the ends of justice, we allow this appeal and quash the order passed by the appellate authority and by the writ Court and direct that on the appellant filing a certified copy of this order along with the relevant documents before the appellate authority within 30 days from today, the appellate authority shall consider the matter on its merit and shall not reject it on the ground of delay, within a period of three months thereafter.

With the aforesaid, the appeal is allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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