

27.09.2021
Sl. No.79
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)

WPA 7409 of 2021

Jibesh Adhikary
Vs.
The Director General
Railway Protection Force & Ors.

Mr. Sanjib Kumar Mukhopadhyay
....for the petitioner.

Mr. S. N. Dutta
....for the respondents.

Affidavit of service filed in Court today is taken on record.

The statutory appeal preferred by the petitioner against the order of the Disciplinary Authority dated 30th September, 2020 has been dismissed only on the ground of limitation, since the appeal was filed 12 days beyond the stipulated time period provided under the applicable rules, being Section 9(2) of the Railway Protection Force Act, 1957. The order of the Disciplinary Authority was passed when the COVID-19 protocol was in operation. The statutory appeal was also filed within the time period when the COVID-19 protocol was operational. The Appellate Authority also has the power to condone the delay and hear out the appeal on merits under the applicable rules. Twelve days' delay during the pandemic should be considered in a sympathetic manner and can be condoned instead of going by the strict rules. The Appellate Authority has failed to exercise a discretion considering the present situation to deny the petitioner a hearing on merit.

The order rejecting the appeal being dated January 11, 2021 is set aside. The Appellate Authority is directed to hear out the appeal on merits within a period of six months from the date of communication of this order.

It is made clear that I have not gone into the merits of the order of the Disciplinary Authority and the Appellate Authority shall be free to decide the appeal on merits without being influenced in any manner by the instant order.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted by the respondents.

Parties shall act on a server copy of the order without being insisting upon production of a certified copy thereof.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arindam Mukherjee, J.)