

22nd September,
2021
(AK)
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W.P.S.T. 88 of 2017

(Via Video Conference)

Somenath Bhattacharyya
Vs.
The State of West Bengal and others

Mr. Uday Narayan Betal
Mr. Debapriya Majumder
...For the Petitioner.

Mr. Anirban Ray
Mr. Pinaki Dhole
Mr. Avisek Prasad
...For the State.

The present application is directed against the judgment and order dated April 27, 2016 passed by the learned Administrative Tribunal in O.A. No. 870 of 2014.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner was a constable working with the Kolkata Police. He was falsely implicated by his wife in a criminal case under Sections 498A, 34 of the Indian Penal Code. The authorities asked him to surrender, which he did. He was in custody for three days. After release on bail, he, however, overstayed for about three days. By the time he intimated this to the authorities, his wife had informed them. A charge sheet was thereafter issued to him by the authorities. The allegations were that there was a criminal case against him, which ended in a charge sheet; he overstayed for

three days and lastly, he did not intimate the date on which he was released on bail. In his reply, the petitioner explained the charges. He was under such mental trauma that he could not intimate the authorities about the release from jail in time. The overstay was, in fact, regularized by imposition of fine, which was duly paid by the petitioner. It is also germane to mention that the petitioner was subsequently exonerated of all charges in the criminal trial. In the disciplinary proceedings, the concerned authority held the petitioner guilty of all the charges. The petitioner thereafter preferred an appeal before the appellate authority. However, there was a delay of about ten years in doing so. Although no separate application was filed for condonation of delay, the delay was, however, explained in the petition of appeal itself. Quite surprisingly, no date was intimated to the petitioner for hearing of the appeal. In fact, the petitioner was not heard at all. After sometime, he received a communication that the appeal was rejected as time barred. Only a purported extract of the order was sent to him. Thereafter, the petitioner preferred an appeal before the learned Tribunal, inter-alia, praying for supply of a copy of the order of dismissal of the appeal by the appellate authority and leave to be granted by the learned Tribunal to bring the same on record by filing a supplementary affidavit and an order revoking, rescinding or cancelling the impugned order of punishment dated July 6, 2004

passed by the disciplinary authority. However, by the impugned order although the merits of the case were gone into and certain purported findings were made against the petitioner, at the end of the said order, the petitioner was directed to be provided with a copy of the order passed by the appellate authority. Neither was the explanation for the delay provided by the petitioner in the petition of appeal considered by the learned Tribunal nor was the matter remanded back to the appellate authority, although a copy of the order of the appellate authority was directed to be supplied. One wonders what purpose would such copy of the order passed by the appellate authority serve if the matter was not remanded back to the appellate authority.

Learned counsel appearing on behalf of the respondents submits as follows. The learned Tribunal went into the merits of the case and quite rightly held that the disciplinary authority was correct in passing the impugned order. Since the prayer was made by the petitioner for getting a copy of the order passed by the appellate authority, the same was also provided for. Besides, there is no particular provision in the Police Regulations of Calcutta for condonation of delay in preferring an appeal, as envisaged in Regulation 11 of the said Regulations.

We have heard learned counsels for both the parties and have perused the application.

First, Section 29 of the Limitation Act provides that the provisions contained in Section 4 to 24 of the Act would apply to other laws unless there is a specific bar contained in such other law. In the Police Regulations, there is no such bar.

Secondly, it appears that only an extract of the order passed by the appellate authority was supplied to the petitioner. It is quite impossible for an aggrieved party to prefer an appeal without first getting a complete copy of an order. Therefore, the learned Tribunal was absolutely correct in directing supply of a copy of the order of the appellate authority. However, the learned Tribunal failed to appreciate that unless the matter was remanded back to the appellate authority, such copy would hardly be of any use to the petitioner.

The learned Tribunal did not even go into the question of explanation of delay provided by the petitioner in his petition of appeal. Instead, it decided to needlessly go into the merits of the case and arrive at certain finding.

It is quite obvious that unless the petitioner is armed with a copy of the order passed by the appellate authority, he could not have effectively challenged the same before the learned Tribunal.

However, remanding back the matter to the learned Tribunal would only protract the whole process.

After all, it is quite evident that the order of the appellate authority also suffered from serious infirmities.

First, the appellant was not heard. Secondly, there is no material available with the respondent to show that the appellant's explanation of the delay was taken into consideration while dismissing the appeal.

In view of the above, we set aside the order passed by the learned Tribunal and remand the matter back to the appellate authority.

The appellate authority shall consider the matter afresh subject to the question of limitation, as expeditiously as possible. The appellate authority shall not be influenced by any observation made by the Learned Tribunal in the impugned order.

Liberty is granted to the petitioner to file an appropriate application seeking condonation of delay before the appellate authority.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

(Jay Sengupta, J.)