

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6791 of 2020

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Rajesh Kumar Jaiswal, male, aged about 45 years, Son of Late Suryanarain Jaiswal Resident of Mohalla- Sabour, P.S.- Sabour, District- Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Commissioner Bhagalpur Division at Bhagalpur.
3. The District Magistrate Bhagalpur.
4. Sub- Divisional Officer Sadar, Bhagalpur.
5. The Senior Superintendent of Police, (SSP), Bhagalpur.
6. The SHO, Mojahidpur Police Station Bhagalpur.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Swapnil Singh, Adv.

For the State : Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 30-06-2022

Heard learned counsel for the petitioner and learned counsel for the State.

2. Copy of the writ petition was served on the State prior to its filing in April, 2020 itself, but no counter affidavit has been filed.

3. The short grievance of the petitioner in the instant case is that his appeal filed under Rule 24 has not been considered by the Commissioner, Bhagalpur Division (Respondent No.2) on its merits as the same was presented with some delay.

4. Learned counsel for the petitioner submits that petitioner was indisposed and, therefore, a delay of 46 days has occurred in filing his appeal before the Commissioner. The matter was filed



in the office of the Commissioner on 01-10-2019 and posted for consideration on the point of condonation of delay in terms of Rule 25 of the Bihar Government Servants (Classification, Control & Appeal) Rules 2005, which reads as follows:-

25. Period of limitation for appeals.- No appeal preferred under this Part shall be entertained unless such appeal is preferred within a period of forty five days from the date on which a copy of the order appealed against is delivered to the appellant:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if he is satisfied that the appellant had sufficient cause for not preferring the appeal in time.”

5. The order sheet, certified copy of which, has been enclosed, portrays a very peculiar state of affairs. After the matter was filed on 01-10-2019, it was fixed for hearing on 16-10-2019. The order dated 16-10-2019 does not manifest that any hearing has taken up on that day. The order that has been recorded reads as follows:-

“ The appeal is delayed. Put up on 13th Nov 2019. ”

6. The next order dated 13-11-2019, also does not manifest that any hearing took place on that date. The order reads as follows:-

“The medical certificate appears to be tampered with as there is over-writing in it and the illness for which the certificate is given is also not a valid excuse. Hence the delay cannot



be condoned and the appeal is dismissed.”

7. From bare perusal of the certified copy of the order passed in the appellate proceedings, it is apparent that no hearing was afforded, much less, consideration of the petitioner’s ground for condoning the delay in filing the appeal. The Court would further take note of the fact that plea of illness appears to have been taken, which is manifest from the order passed in the Appellate proceedings, taken note of above. However, there is no clue as to how the Appellate Authority has arrived at a conclusion that the overwriting, if at all, was evidence of tampering. Whether there was any overwriting in the medical certificates, and if so, why there was overwriting, and by whom, are issues which could have been considered had the petitioner been heard.

8. In view thereof, having regard to the very small period of delay, the Commissioner should have taken a lenient view and considered the appeal of the petitioner on its merit which has not been done.

9. In view of the aforesaid circumstances, this Court would find that order dated 13-11-2019 passed by the Commissioner, Bhagalpur Division, in Misc (Service) Appeal Case No. 12 of 2018 is legally unsustainable and hereby



quashed. In the interest of justice, the Court would consider it appropriate that the petitioner’s appeal be considered on its merits by the Commissioner, Bhagalpur Division, (Respondent No.2). The petitioner would be under a legal obligation, and his counsel undertakes that he shall fully cooperate and ensure his appearance before the Commissioner. The first appearance of the petitioner must be submitted in the appellate proceedings within two weeks from today, so as to ensure that the appeal is taken to its logical conclusion expeditiously and without undue delay.

10. The application stands allowed with the aforesaid direction.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05-07-2022
Transmission Date	

