

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1460 of 2021

=====

Sharma Nand Sharma, Son of Prabhu Singh, Resident of Village-Imilia, P.S.-
Molawar in the district of Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home,
Government of Bihar, Patna.
2. The Inspector General, Prisons, Home Department, Government of Bihar,
Patna.
3. The Director (Administration), Home Department, Government of Bihar,
Patna.
4. The Jail Superintendent, Bhagalpur, Central Jail, Bhagalpur.
5. The Superintendent, Sub Jail Daudnagar, Aurangabad.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shashank Shekhar Sinha, Advocate Mr. Braj Nandan Kumar Tiwary, Advocate
For the Respondent/s	:	Mr. Nadim Seraj, G.P.-5 Ms. Shalini, AC to GP-5

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-09-2022

Hard copy of the counter affidavit is being taken on
record.

2. The petitioner's appeal filed pursuant to liberty as
recorded in the order dated 05.08.2019 passed in CWJC No.14076
of 2011 has not been considered and has been rejected as being
barred by limitation under the order of the appellate authority
dated 23.03.2020.



3. Counsel for the petitioner submits that once the petitioner had availed the remedy after seeking liberty in the writ proceedings, the authority should have considered the petitioner's appeal on merits.

4. State Counsel, on the other hand, submits that the findings of the disciplinary authority are based on a pattern of similar misdeeds committed by the petitioner in past and after giving due opportunity to him, it requires no interference. The appellate authority's order is also in accordance with the provisions contained in Rule 25 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as "the CCA Rules", which prescribes a limitation of 45 days for filing an appeal.

5. Considering the rival submissions, this Court would take notice of the fact that the order of punishment is of 27.12.2010, whereafter the writ petition was filed by the petitioner in 2011 itself.

6. This Court had permitted the petitioner to withdraw the writ petition, bearing CWJC No.14076 of 2011, recognizing the petitioner's liberty to file appeal before the appropriate authority.



7. In view of the aforesaid circumstances, this Court would observe that the petitioner had sufficient cause for not preferring the appeal within the period specified in Rule 25 of the CCA Rules on account of pendency of CWJC No.14076 of 2011 for nearly eight years. The petitioner was thus entitled to consideration of his appeal on merits.

8. This Court would thus find that the order of the appellate authority dated 23.03.2020 shows that the appellate authority has failed to exercise jurisdiction vested in it under the proviso to Rule 25 of the CCA Rules, which provides for condonation of delay subject to sufficient cause being shown.

9. The order of the appellate authority dated 23.03.2020 is hereby quashed. Matter is remitted to the appellate authority for considering the appeal on merits without raising the issue of the same being barred by limitation.

10. The writ petition is allowed to the aforesaid extent.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

