

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2852 of 2023

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Sadanand Paswan Son of Kapildeo Paswan Resident of Village-Telghi, Tola-Jairampur Police Station-Bihpur, District-Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Old Secretariat, Patna.
2. The Commissioner, Bhagalpur Division, Bhagalpur.
3. The District Magistrate, Bhagalpur Division, Bhagalpur.
4. The Additional Collector, Bhagalpur Division, Bhagalpur.
5. The Superintendent of Police Bhagalpur Division, Bhagalpur.
6. The Officer-in-Charge, Bhagalpur Division, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Navin Prasad Singh, Adv. Mr.Narayan Singh, Adv.
For the State	:	Mr.Dhurendra Kumar, AC to GP5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 20-07-2023 Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner was a *Chowikidar* and has been dismissed on the charge of having been found in an inebriated condition. The petitioner's order of dismissal is of 03.01.2022 (Annexure 8). He has preferred an appeal before the Commissioner, Bhagalpur, Division (respondent no. 2) in terms of Rule 24 of the Bihar Government Servants (Classification, Control and Appeal) *Rules,2005*" (for brevity 'C.C.A, Rules, 2005). The appeal has been rejected just one day thereafter on



15.03.2022 (Annexure 9) by an order refusing to exercise the appellate jurisdiction on account of delay of 15 days in filing the appeal. The order manifests that the petitioner had placed on record some medical documents to justify the 15 days delay and claims sufficient cause for condonation of 15 days in filing the appeal. The finding of the Commissioner, on the other hand, reads as follow:

"चुँकि अपीलकर्ता द्वारा विलंब क्षांति हेतु समर्पित दस्तावेज प्रथम दृष्टया ही संदेहास्पद प्रतीत हो रहे हैं। अतः विलंब क्षांत करने का कोई ठोस आधार नहीं होने के कारण यह अपील वाद अंगीकार के बिन्दु पर खारिज की जाती है।

आदेश की प्रति सभी संबंधित पक्षों को उपलब्ध करा दी जाय। "

3. This Court finds that under Rule 25 of the C.C.A, Rules, 2005, the appellate authority has been vested with the discretion to entertain an appeal after the expiry of 45 days being the limitation for filing of appeal, if he is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

4. The order, as extracted the above , shows no consideration of the petitioner's claim and, in the opinion of the Court, the order of the appellate authority, rejecting the appeal,



only on the ground of delay, is unsustainable showing no consideration and improper exercise of discretion under Rule 25 of the C.C.A., Rules, 2005. The order of the appellate authority dated 15.03.2022, is quashed. The matter is remanded to the Divisional Commissioner, Bhagalpur (respondent no. 2) for considering the petitioner's appeal on its merits.

5. The writ application is allowed.

(Madhuresh Prasad, J)

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