

16-11-2023
ct no. 13
sl. 20
pk

WPA 18960 of 2023

Shri Nanda Dulal Bose @ N. D. Bose
-Versus-
Union of India & Ors.

Mr. Piyush Chaturvedi,
Mr. Satyabrata Chakraborty,
Ms. Rituparna Ghosh,
Mr. Sourav Sardar

...for the petitioner

Mr. Ajay Chaubey,
Mr. Arunava Ganguly

...for the respondents.

1. Supplementary affidavit filed in Court is taken on record.
2. The writ petitioner challenges the order of punishment imposed by the Summary Court dated 31.03.1999 reducing his rank from PANK to that of a Sepoy and awarding rigorous imprisonment of 14 days.
3. By reason of reduction in rank, the length of service of the petitioner as a Sepoy came to be reduced to 17 years and he was therefore automatically discharged from service by the respondent no. 4.

4. The writ petitioner challenged the actions of the respondent no. 4 before this Court in WPA 15268(W) of 2009. By an order dated 8th December, 2009, this Court found that the writ petition was not maintainable in view of Section 34 of the Armed Forces Tribunal Act, 2007. The Registrar (Administration) of this Court was directed to transmit the records of the said writ petition to the said Armed Forces Tribunal.
5. The said Tribunal registered the petitioner's case as T. A. No. 1 of 2009. By orders dated 11.02.2013 and 05.03.2013 it was held that the petitioner's grievance was not maintainable before the Tribunal.
6. The petitioner thereafter filed this writ petition in the year 2023 challenging the entire proceedings. In essence the petitioner claims that had the illegal order of punishment not been imposed, he would have got two more years of service. He claims the benefits of such two years.
7. Across the bar, Mr. Chaturvedi submits that since the petitioner had not served

during the period of time, he should be entitled to 50 per cent of the dues.

8. The respondents have opposed the entertaining of the writ petition on the ground of inordinate delay and laches of ten years.
9. The explanation offered by the petitioner at paragraph 19 of the writ petition is that his wife was seriously unwell and he was taking care of her. It is also pleaded that he had entrusted his papers to his advocates but could not pursue the same due to ailment of his wife. He has also mentioned the pandemic as a ground for delay.
10. It is submitted by Mr. Chaturvedi that the order of discharge was never served on his client. It appears to this Court that the respondent, in reply to the petitioner's representation on 28.02.2009 indicated that he was discharged from service with effect from 31.03.1999.
11. It is indeed true that the petitioner has been shunted from High Court to AFT and the AFT itself had refused to entertain the

petitioner's claim on the ground of maintainability, for no fault on his part.

12. It is now well settled that the laws of limitation do not apply to a writ petition. What is applied is the principle of delay and laches. Even assuming for the sake of argument that the petitioner's cause of action survived until the AFT had refused to entertain the petitioner's grievance for reasons of maintainability, the writ petitioner should have sought remedies against the orders of the AFT and/or the respondents immediately in 2013 or soon thereafter.

13. The Court is unable to accept the ailment of the petitioner's wife as a ground for him not to seek remedies for his grievance. The allegations made against the advocate cannot be entertained since the advocates are not parties to the instant proceeding.

14. This Court's mind is not free from doubt that the petitioner, belatedly and with inordinate delay, has woken up in the year 2023 and has attempted to throw a stone in the dark. The writ petition is hopelessly

barred by delay and laches and is speculative.

15. For the reasons stated herein above, this Court is not inclined to entertain the writ petition.

16. The writ petition shall stand dismissed.

17. There will be no order as to costs.

18. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)