



WA(MD)No.1280 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

W.A.(MD)No.1280 of 2023

A.Suresh

... Appellant

Vs.

1.The Assistant Director (Pers-II)
Directorate General
Sashastra Seema Bal
Block-V (East) R.K.Puram
New Delhi 110 066

2.The Deputy Inspector General
SHQ, Sashastra Seema Bal
Gorakhpur
Uttar Pradesh

3.The Commandant,
9th Battalion
Sashastra Seema Bal
Balrampur
Uttarpradesh

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 05.10.2021 in W.P.(MD) No.6054 of 2016.



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For Appellant : Mr.T.S.Mohamed Mohideen
For Respondents : Mr..K.Govindarajan
Deputy Solicitor General of India

JUDGMENT

(Judgment of the Court was delivered by *M.S.RAMESH,J.*)

This writ appeal is directed against the order of the writ Court made in W.P.(MD) No.6054 of 2016 dated 05.10.2021.

2. The appellant herein was dismissed from the respondent services by the Commandant, 9th Battalion, finding him not suitable for further retention in service under Rule 18 of the Sashastra Seema Bal, through an order dated 29.08.2014. Rule 29 of the Sashastra Seema Bal provides for an appeal to the concerned appellate authority, for which, a limitation of 90 days is prescribed. However, the appellant had belatedly filed the appeal on 15.12.2015, ie., after a lapse of one year and three months. Through the impugned order dated 02.01.2016, his appeal petition was rejected on the sole ground that the appeal has been preferred, after the limitation period of 90 days. The reason assigned by the appellant for delay in preferring the appeal is that he was implicated in a criminal case in C.C.No.260 of 2014. Since he was periodically



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asked to appear before the criminal Court during the course of trial, he could not report for duty or seek for further extension of leave and therefore, could not file the appeal in time.

3. When the order of the appellate authority was put under challenge before the learned Single Judge in W.P.(MD) No.6054 of 2016, the learned Single Judge, through the order impugned herein, dated 05.10.2021, had dismissed the writ petition predominantly on the ground that the appellant's acquittal by the criminal Court will not absolve the domestic charges against him. We are of the view that the appellant should not be deprived of appeal remedy and that he can be given an opportunity to substantiate his case before the appellate authority.

4. We have taken note of the fact that the criminal case against the appellant in C.C.No.260/2014 had ended in acquittal as early as on 31.08.2015. Further more, the charge against the appellant was that he had been on unauthorized absence and consequently he was declared as a deserter. The appellant has also given his reasons that he could not attend duty or seek for extension of leave on account of his involvement in a



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criminal case for personal presence before the trial Court in Tamil Nadu.

Now that, the case had ended in acquittal and by taking into account the age of the appellant, we are inclined to accept the reasons assigned by him for delay in preferring the appeal. However, the appellate authority may be given liberty to decide the appeal on its own merits and in accordance with law uninfluenced by any of the observations made in this judgment.

5. In the light of the above findings, the order of the writ Court dated 05.10.2021 passed in W.P.(MD) No.6054/2016 as well as the impugned order in the writ petition dated 02.01.2016 on the file of the 2nd respondent is set aside and the writ appeal is allowed. Consequently, there shall be a direction to the second respondent herein to take up the appellant's appeal petition dated 15.12.2015 and decide the same on its own merits and pass final orders in accordance with law, as expeditiously as possible. No costs.

(M.S.R.,J.) (M.N.K.,J.)
22.08.2023

NCC : Yes / No
Index : Yes / No
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AND
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