

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Partha Sarathi Sen, J.**

**MAT 1056 of 2024
+
IA NO: CAN 1 of 2024

Ganesh Prasad Singh
VS.
The Union of India & Ors.**

For the Appellant : Mr. Soumik Ganguli,
Mr. Dilip Kumar Sadhu,
Ms. Chandana Chakraborty, Advocates

For the UOI : Mr. Pinaki Ranjan Chakraborty, Advocate

Heard & Judgment on : June 21, 2024

DEBANGSU BASAK, J.

1. The appeal is directed against an order dated April 23, 2024 passed in WPA 318 of 2024. Appeal is at the behest of the writ petitioner.
2. Learned advocate appearing appellant submits that, paragraph 12 of the impugned order rejects an oral prayer made on behalf of the appellant seeking leave to challenge the order of the Disciplinary Authority and the Appellant Authority. He submits that since the appellant is a dismissed

employee, liberty should be granted to the appellant to challenge the order of the Disciplinary Authority and the Appellate Authority.

3. Learned advocate appearing for the appellant draws the attention of the Court to the chequered history of the matter. He submits that, appellant initially filed a writ petition before the Hon'ble High Court at Patna which was transferred to this Hon'ble Court for disposal. Such writ petition was allowed by an order dated July 17, 2003 in C.O. 20025(W) of 1995. The High Court set aside the order passed by the Disciplinary Authority dated July 29, 1995 and directed such Authority to reconsider the appeal of the appellant on merits after taking into consideration all points raised in the memo of appeal. Subsequent thereto, no steps were taken in the appeal. At least, the appellant was not informed of the disposal of the appeal. Consequently, the appellant moved another writ petition being W.P. No. 19431 (W) of 2019 in which an order dated November 7, 2019 was passed by the High Court requiring the Appellant Authority to dispose of the appeal within the time period specified. The Authorities not complying with such order, a contempt petition being CPAN No. 613 of 2020 was filed which was disposed of by the order dated December 14, 2023. He submits that, thereafter, the appellant filed another writ petition resulting in the impugned order. He submits that, since the order of the Appellant Authority was passed in his absence and such order was not communicated to him, he should be given an opportunity to contest the disciplinary proceedings from the appeal stage. Refusal of such prayer by the learned single Judge was erroneous.

4. Union of India is represented.

5. It appears from the records made available to Court that, the appellant was recruited as a constable of the Border Security Force on July 29, 1987. He was posted at different locations. A disciplinary proceeding

was initiated as against the appellant. Such disciplinary proceeding resulted in an order of dismissal being passed on October 8, 1994.

6. Order of the disciplinary proceeding was challenged by the appellant in terms of the Rules governing the disciplinary proceeding before the Appeal Forum. Such Appeal Forum concurred with the order of dismissal passed by the Disciplinary Authority. Aggrieved by the decision of the Appellate Authority, appellant filed a writ petition before the Patna High Court which was transferred to this High Court and was disposed of by an order dated July 17, 2003 passed in CO 20025 (W) of 1995. By an order dated July 17, 2003 passed by the High Court, order of the Appellate Authority dated July 29, 1995 was set aside. Appellate Authority was directed to reconsider the appeal of the appellant on merits after taking into consideration all points raised by the appellant in the memo of appeal. Such appeal was directed to be disposed of within a month from the date of communication of the order.

7. Affidavit filed by the Union of India before the learned single Judge demonstrates that, the Appellate Authority in terms of the order dated July 17, 2003 of the High Court, disposed of the appeal on October 1, 2003 and communicated its decision to the appellant through registered post. Appellant approached the High Court afresh by way of WP 19431(W) of 2019. In such writ petition, appellant claimed that the Authorities did not act in terms of the order dated July 17, 2003 passed in CO 20025 (W) of 1995 requiring the Authorities to dispose of the appeal within the time period specified.

8. The second writ petition of the appellant being WP 19431(W) of 2019 was disposed of ex parte on November 7, 2019 by directing the Authorities to dispose of the appeal in accordance with the order dated July 17, 2003

passed in CO 20025 (W) of 1995 within a period of one month from the date of communication of the order.

9. A contempt petition was filed by the appellant being CPAN No. 613 of 2020 complaining violation of the order dated November 7, 2019 passed in the second writ petition. Such contempt petition was contested on behalf of the alleged contemnor. In such contempt petition it was brought to the notice of the Court that the order dated July 17, 2003 passed in CO 20025 (W) of 1995 stood complied with by the Appellate Authority and that an order dated October 1, 2003 was passed in such appeal of the appellant, dismissing such appeal and concurring with the punishment imposed. In the contempt petition also, contentions with regard to service of the order of the Appellate Authority dated October 1, 2003 through registered post on the appellant were raised on behalf of the alleged contemnor. The Court hearing the contempt petition, after considering the merits, held that since the Appellate Authority already considered the appeal preferred by the appellant and passed a reasoned order, it would be open to the appellant to challenge the same in accordance with law, if permissible. Contempt petition was disposed of accordingly.

10. Thereafter, appellant did not challenge the order of the Appellate Authority dated October 1, 2003. Rather, appellant filed a writ petition being W.P. 318 of 2024 resulting in the impugned order. In such writ petition, appellant sought the following reliefs:-

"(a) A writ of and/or in the nature of Mandamus commanding the respondent authorities to act in accordance with law and to take appropriate steps forthwith for payment of all terminal benefits as the petitioner (No.87254575 Constable in 6Bn BSF since dismissed from service) is legally entitled to get along with interest @ 18% per annum from the date of the petitioner's dismissal from service on 08.10.1994.

(b) A writ of and/or in the nature of Certiorai directing the respondents to certify and transmit to this Hon'ble Court the records of this case so that conscionable justice may be meted out;
(c) Rule NISI in terms of the prayers (a) and (b) as above;
(d) Costs of and incidental to this application;
(e) Such other or further order(s), direction(s) as to this Hon'ble Court may deem fit and proper."

11. As would appear from the prayers made in the writ petition, being the 3rd writ petition at the behest of the writ petitioner, no challenge was levelled against the Appellate Authority's order dated October 1, 2003 although, the appellant at least at the time of filing of the 3rd writ petition was well aware of the order of the Appellate Authority. Appellant chose to limit the prayers in the 3rd writ petition to payment of terminal benefits only.

12. The writ petition was disposed of by the impugned order by permitting the appellant to approach the authorities and file necessary documents and fill up necessary forms for release of applicable terminal benefits of the appellant.

13. In course of hearing of the writ petition, an oral prayer was made by the learned counsel appearing for the appellant for leave to challenge the order of the Disciplinary Authority and the Appellate Authority. Such prayer was considered and rejected by the impugned order.

14. This rejection of the prayer of the appellant is assailed in the present appeal.

15. In our view, the learned single Judge correctly rejected such prayer in view of the inordinate delay on the part of the appellant. As noted above, the order of the Appellate Authority is dated October 1, 2003. The appellant was aware of such order at least when the contempt petition was

being disposed of, that is, on December 14, 2023. Thereafter, the appellant filed the writ petition resulting in the impugned order, where the appellant limited its prayer only to the terminal benefits. Appellant consciously gave up the claim of challenge to the order of the Disciplinary Authority and the Appellate Authority although being permitted to do so by the order dated December 14, 2023 when the appellant filed the 3rd writ petition.

16. Therefore, we find no merit in the present appeal.

17. MAT 1056 of 2024 along with CAN 1 of 2024 are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

18. I agree

(Partha Sarathi Sen, J.)