

05.12.2024
Ct. 23
M/L 10
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 22853 of 2024

**Rupamoy Kundu
-Vs-
Union of India & Ors.**

Mr. Ayanabha Raha,
Mr. Pritam Choudhury,
Ms. Sonali Gupta,
Mr. N Yang Lama

... for the petitioner

Mr. Rudrajyoti Bhattacharyya,
Ms. Rini Bhattacharyya

... for the Union of India

The petitioner, a Constable (GD) in the Border Security Force (in short, 'BSF'), was issued with two charge sheets and was dismissed from service by an order dated 6th February, 2023. The petitioner preferred a statutory appeal under Section 117(2) of the BSF Act, 1968 and the Rules 167 and 168 of the BSF Rules, 1969. During the pendency of the said statutory appeal, the instant writ petition has been filed, *inter alia*, for a direction to dispose of the said statutory appeal at an early date.

There is a dispute in the version of the petitioner and that of the respondents so as to the date of the filing of the appeal. The petitioner says that the same has been filed within the stipulated time period

provided for filing a statutory appeal while the respondents say that the appeal was properly filed before the appropriate Appellate Authority beyond the stipulated period of time.

Be that as it may, since a statutory appeal has been preferred and it is the view of the Courts in India that the statutory remedy, if available, has to be exhausted first prior to challenging the action before a competent forum.

In the aforesaid fact and circumstances, the Appellate Authority being the respondent no. 2 is directed to hear out the appeal and pass necessary orders at an early date, preferably within a period of three months from the date of communication of this order but not beyond four months from the said date. I make it clear that I have not gone into the merits of the appeal. The Appellate Authority shall be free to decide the issues that may be raised in the appeal independently and without being influenced by any observations made hereinabove. The appeal should be decided in accordance with law and the applicable Service Rules by affording the petitioner an opportunity of hearing, if the Rules so prescribe. The appellate order shall also be communicated to the petitioner immediately after the same being passed.

Nothing further remains to be decided in this writ petition. The writ petition is accordingly disposed of.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

All parties including the respondent no. 2 shall act on the basis of the server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

(Arindam Mukherjee, J.)