

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.536 of 2022
In
Civil Writ Jurisdiction Case No.7724 of 2007

1. Union of India through the Secretary and Ministry of Home Affairs, New Delhi.
2. The Director General, Border Security Force, Government of India, Ministry of Home Affairs, New Delhi.
3. The Additional Deputy Inspector General, (Establishment), Border Security Force, Block No. 10, 5th Floor, CGO Complex, Lodhi Road, New Delhi-110003
4. The Commandant, 193, Battalion, Border Security Force, 56 A.P.O.

... .. Appellant/s

Versus

Rameshwar Prasad, Son of Sri Ram Janam Prasad, Resident of Village Dhamar, P.O. Dhamar, P.S. Arrah Mufassil, District Bhojpur, presently posted as Cook, 193 Battalion, Border Security Force, Kalyani (Kolkata), District Nadia (West Bengal)

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Satyabir Bharti, Advocate
For the Respondent/s : Mr. Pandit Jee Pandey, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 11-02-2025

We have heard Mr. Satyabir Bharti, the learned Advocate for the appellants/Union of India and Mr. Pandit Jee Pandey, the learned Advocate for the respondent.



Re. I.A. No. 02 of 2024 :-

2. We have perused I.A. No. 02 of 2024 seeking condonation of delay of 269 days in preferring the appeal.

3. For the reasons stated in the application, we are convinced that good grounds exist for the delayed filing of the appeal. As such, we condone the same.

4. I.A. No. 02 of 2024 stands allowed.

Re. L.P.A. No. 536 of 2022 :-

5. By the impugned judgment, the order passed by the appellate authority setting aside the dismissal of the respondent but invoking the provision contained in Section 54(5) of the Fundamental Rules, and thus directing that the intervening period between the dismissal order and the reinstatement of the respondent would be treated as period not adjusting it as an extraordinary leave, was set aside by the learned Single Judge.

6. The respondent, who was a cook in Border



Security Force, was dismissed from service after a disciplinary proceeding was initiated against him for remaining on unauthorized leave for a long time.

7. The afore-noted dismissal order was challenged by the respondent *vide* C.W.J.C. No. 2365 of 2000. The writ petition was dismissed, whereafter the respondent preferred L.P.A. No. 334 of 2002. The appeal of the respondent was allowed. The order of the learned Single Judge was set aside and the case of the respondent was remitted to the appellate authority to test the correctness of the order of dismissal. The appellate authority passed the order on 13.01.2005 by which the order of dismissal was set aside but it was directed that the reinstatement of the respondent would be subject to his medical fitness. It was further clarified that the period from the date of dismissal to the date of rejoining service was required to be regularized as a leave of kind due in terms of the Fundamental Rules 54(5).

8. This was challenged by the respondent before



the learned Single Judge, who, on a reading of the Fundamental Rules 54, in its entirety, found that such adjustment could have been made by the disciplinary authority and not the appellate authority. Even otherwise, for invoking the provisions contained in Fundamental Rules 54(5), the respondent/appellant was required to be given notice.

9. We are in absolute agreement with the opinion of the learned Single Judge.

10. The contention raised on behalf of the Union of India that because the respondent was not fully exonerated, therefore, the provisions of Fundamental Rule 54(2) would not be attracted, is without substance. The order of dismissal was set aside and the respondent was directed to be reinstated. In that case, it had to be treated as an order fully exonerating the respondent. In that case, again, it was the disciplinary authority, in whose domain the power lay with respect to adjustment of the period immediately before the order of termination.



11. Thus, we find that no good ground has been made out by the appellants/Union of India to make any interference with the judgment passed by the learned Single Judge, referred to above.

12. The appeal is dismissed.

13. Interlocutory application/s, if any, also stands disposed off accordingly.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Sauravkrsinha/
Praveen-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2025
Transmission Date	NA

