

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1200 of 2025

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Sandip Kumar Son of Sri Rajendra Paswan, Resident of Village-
Chhotikesopur, P.O. and P.S.- Jamalpur, District- Munger.

... .. Petitioner/s

Versus

1. The Union of India through Inspector General of Indo Tibbthan Border Police Force, North West Frontier, New Delhi, Home Ministry, Govt. of India.
2. Inspector General ITBP, East Frontier Head Quarter 6th Floor Kendriya Bhawan Sector-H, Aliganj, Lucknow, U.P.
3. The Commandant, 51 BN, Indo Tibbthan Border Police Force, North West Frontier, MHA, Govt. of India, P.O.- Punjab University District- Patiala (Punjab).
4. The Deputy Inspector General (Establishment), Directorate Indo Tibbthan Border Police Force.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Raja Ram Mishra, Adv.
For the Respondent/s	:	Mr.Awadhesh Kr. Pandey, Sr. CGC
		Mr.R.K. Sharma, CGC
		Mr.Abhishek Kr. Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 13-03-2026

Heard Learned Counsel for the petitioner and Learned
Counsel for the State.

2. The present writ petition has been filed with the
following reliefs:-

*1. That this is an application for
issuance of a writ of 'CERTIORARI' to quash the
appellate order dated 25/10/2024 passed by the
Inspector General ITBP, East Frontier Head
Quarter 6th Floor Kendriya Bhawan Sector-H,
Aliganj, Lucknow, U.P.(Respondents No.2) through*



which appeal against removal from service of the petitioner has been rejected as time barred and to quash the office order dated 23/01/2016 issued by the Commandant 51 BN ITBP through which the petitioner has been removed from the service with effect from 18/01/2016.

3. Learned counsel for the petitioner submits that the petitioner has earlier moved before this Court in C.W.J.C. No.7432 of 2016 which was withdrawn with liberty to avail remedy of appeal vide order dated 13.10.2023.

4. Counsel further submits that when petitioner has preferred appeal before the concerned authority, his appeal was not considered on merit rather it has been rejected on the ground of delay. Therefore, the appellate order, which has not been considered on merit, be set aside.

5. Learned counsel for the Union of India firstly, sought time to file a counter-affidavit, but upon specific direction of the Court to clarify the position of law, he fairly submits that from the order dated 13.10.2023 passed by this Hon'ble Court in C.W.J.C. No.7432 of 2016, it is clear that liberty was granted to the petitioner to prefer appeal. He further submits that it is due to this reason, filing of appeal of the petitioner has been entertained by the authority and authority thereafter, passed order in accordance with law.



6. In the light of the submissions made, the only legal point involved in the present case is that once liberty to prefer appeal has been granted by the Writ Court and thereafter, the petitioner preferred appeal before the authority concerned, then in that case, the Appellate Authority ought to pass order on merit or reject it on the ground of delay.

7. With regard to answering this legal point, it is necessary to quote the provision of Order XXIII Rule 1(3) & Rule 1-A(2) of the Code of Civil Procedure, 1908 which states as follows:-

1(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim,

1-A(2) “Limitation law not affected by first suit- In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.”



8. Upon perusal of the provisions laid down under Order XXIII Rule 1(3) of the C.P.C., it transpires to this Court that the terms of withdrawal has been specified in the order sheet passed by the learned Single Judge, which states as follows:-

“At the outset, the learned counsel for the petitioner does not seek to press the present writ petition, however, seeks liberty on behalf of the petitioner to challenge the order of punishment dated 30.11.2015, by filing appropriate appeal. Liberty, so sought, is granted.

2. The present writ petition stands disposed off as not pressed.”

9. Here in the present matter, liberty to prefer appropriate appeal has been granted and with this direction, the writ petition was disposed of, but Rule 1-A(2) of Order XXIII of the C.P.C. states that “**Limitation law not affected by first suit-** clearly states that in any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.”

10. Meaning thereby, when any fresh proceeding instituted on permission granted by the Writ Court, then in that case, there is no question of limitation arise.



11. In this view of the matter, the appellate order dated 25.10.2024 passed by the Inspector General ITBP, East Frontier (respondent No.2) (annexure-P/6) is hereby set aside and the present writ petition is hereby allowed.

12. However, it is hereby directed to Respondent No.2 (Appellate Authority) to pass a fresh order on merit considering this aspect that in the withdrawal of the earlier writ, liberty to file appeal has been granted.

13. With the aforesaid directions and observations, the present writ application stands allowed.

(Dr. Anshuman, J)

Prakashmani/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

