

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2580 of 2021

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Arbind Kumar Singh, Ex-Constable No. 970025245 'F' Coy, 81Bn. BSF, Son of Sri Suresh Pd. Singh, Resident of Village and P.O.-Kachhawa, P.S. NasriGanj, District-Rohtas, PIN-821309 (Bihar).

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. The Director General, Border Security Force, 10, CGO Complex, Lodi Road, New Delhi-110003.
3. The Commandant, BSF, 81st Bn. Seema Nagar, District-Nadia (West Bengal).
4. The Deputy Commandant/Adjutant, BSF, 81st Bn. Seema Nagar, District-Nadia (West Bengal).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Mohan, Adv.
For the Respondent/s	:	Dr. K.N. Singh, ASG
For the U.O.I	:	Ms. Punam Kumari Singh, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 16-07-2026

Learned Advocate for the respective parties are present.

2. The petitioner, who had been serving as an Ex-Constable in a Border Security Force was subjected to a disciplinary proceeding on the imputation that he along with another Constable Suresh Kumar assaulted the Head Constable and others. Besides, further allegation of disobeying the order of the higher authority which led to dismissal of the petitioner vide order dated 07.01.2004 issued by the Dy. Commandant BSF, 81



Bn. Seema Nagar, Nadia, West Bengal. Against the order of dismissal, the petitioner also preferred appeal which was also outrightly turned down affirming the order of dismissal. The Mercy Appeal filed by the petitioner also came to be rejected on 19.06.2007.

3. Learned Advocate for the petitioner urged that the petitioner was charged along with Constable Suresh Kumar of causing assault to his senior Head Constable, while they were under the influence of liquor. However, with respect to Suresh Kumar, who was also subjected to identical disciplinary proceeding and inflicted with the punishment of dismissal subsequently, he came to know that he has been allowed to join, but despite seeking information in this regard he has not been provided any information, due to which the delay has occurred in approaching the Court.

4. On the other hand learned Advocate for the Union of India categorically submitted that the impugned order came to be passed long back in the year 2004 and lastly the Mercy Petition has also been rejected in the year 2007, but to the utter surprise the petitioner has approached this Court in the month of November, 2020, and thus, completely barred by the delay and laches. So far the information with regard to co-delinquent C.T.



Suresh Kumar is concerned, it is categorically submitted that the RTI application filed by the petitioner was duly received in the office, in which, he requested for certain information; the same was replied by the Information Officer that BSF being an organization listed in Serial No. 09 of the second schedule of the RTI Act is not covered under the RTI Act, 2005, except in cases pertaining to corruption and human rights violation in terms of Section 24 of the RTI Act, 2005.

5. Having considered the submissions advanced by learned Advocate for the respective parties and mindful of the settled legal position that the Writ Court having a prerogative discretionary jurisdiction must not exercise its power to entertain the stale and belated claim, if a person sleeps over his right. Time without numbers, the Hon'ble Supreme Court in catena of decisions has reinforced the aforementioned legal position; it would be, however, worth benefiting to refer the observation made in the case of **Mrinmoy Maity Vs. Chhanda Koley & Ors., (2024) 15 SCC 215**, the relevant paragraphs nos. 11 & 12 referred to hereunder as follows:-

"11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a



reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, inasmuch as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court.

12. This Court in Tridip Kumar Dingal v. State of W.B. [Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] has held to the following effect: (SCC p. 784, paras 56-58)

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs



under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [State of M.P. v. Bhailal Bhai, (1964) 15 STC 450 : 1964 SCC OnLine SC 10 : (1964) 6 SCR 261 : AIR 1964 SC 1006] , Moon Mills Ltd. v. Industrial Court [Moon Mills Ltd. v. Industrial Court, 1967 SCC OnLine SC 117 : AIR 1967 SC 1450] and Bhoop Singh v. Union of India [Bhoop Singh v. Union of India, (1992) 3 SCC 136]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110 : (1970) 25 STC 289] , Durga Prashad v. Controller of Imports and Exports [Durga Prashad v. Controller of Imports and Exports, (1969) 1 SCC 185] and Rabindranath Bose v. Union of India [Rabindranath Bose v. Union of India, (1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the



court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.”

6. In view of the admitted position that the petitioner was dismissed from service long back in the year 2004 and his appeal was also rejected, besides the Mercy Petition has been turned down in the year 2007, but the present writ petition has been filed after an inordinate delay in the year 2020, this Court is not in a position to exercise its discretionary jurisdiction.

7. Accordingly, the present writ petition stands dismissed on account of delay and laches.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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