

CASE NO.:
Appeal (civil) 3024 of 2007

PETITIONER:
Ishwar Singh

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 16/07/2007

BENCH:
Tarun Chatterjee & Markandey Katju

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO 3024 OF 2007.
(Arising out of SLP) No.13110 of 2006)

TARUN CHATTERJEE, J.

1. Leave granted.

2. After the notice was issued by this Court on the instant Special Leave Petition on 18th of August, 2006, the petition again came up for hearing on 23rd of April, 2007 when the following order was passed:

"It is stated that the petitioner (Constable-Driver) was dismissed from service and his case was that there was only one day's delay in reporting for duty and there was also a justifiable reason of death of his father. In the facts and circumstances of the case, it would be appropriate if the respondent-Union of India considers his case sympathetically if he can be reinstated in service without back wages."

3. Departmental proceedings were initiated against the appellant and the inquiry officer returned a finding of guilt against him. The disciplinary authority, relying on the said finding of the inquiry officer, agreed with the same and imposed a penalty of dismissal from service on the appellant.

4. Being aggrieved by the said order of dismissal, the appellant challenged the same before the concerned statutory authorities. Finally the order of dismissal was challenged before the Central Administrative Tribunal which also dismissed the application of the appellant on the ground that the same was time barred and that no reasonable explanation had been given by the appellant for preferring the appeal belatedly.

5. Challenging the order of the Central Administrative Tribunal, a writ petition was moved before the High Court. The High Court also dismissed the writ petition, inter alia, on the following finding :

"We have gone through the records and having heard the learned counsel for the parties, we find that there was no reason for the petitioner in not approaching the court/tribunal in terms of the statement made by the respondents in their letter dated 12th of June, 2001. It was specifically mentioned in the said communication sent to the

petitioner by the respondents that he now has a remedy to move the court against the order of punishment of the disciplinary authority and also as against the order passed by the appellate authority. The fact that no revision would be against the said order was also brought to his notice. Despite the said fact, the petitioner went on filing representation after representation. The said representations were not statutory. The filing of such representations is not provided for. The petitioner had all the options to move the Tribunal for redressal of his grievances. He did not exercise such option expeditiously. He slumbered over the matter and did not avail the remedy available to him"

6. It is this order of the Division Bench of the High Court which the appellant has challenged by way of a special leave petition in which leave has been granted. As noted herein earlier, the matter came up for hearing before a Bench of this Court on 23rd of April, 2007, when it was observed that the dismissal from service of the appellant was due to one day's delay in reporting for duty and there was also a justifiable reason of death of his father. Considering this aspect of the matter this Court thought it fit to direct the Union of India-respondents to consider the case of the appellant sympathetically and if he could be reinstated in service without back wages.

7. The matter came up for hearing before this Bench on 9th of July, 2007 when the learned counsel appearing for the respondents submitted on instruction that in view of the observations made by this Court on 23rd April, 2007 respondents would have no objection to reinstate the appellant in service without payment of back wages. Such being the stand taken by the respondents and in view of the submissions made by the learned counsel for the appellant that in the event he is reinstated he would not claim back wages, we direct the respondents to reinstate the appellant in service within one month from the date of communication of this order. We make it clear that the appellant shall not be entitled to back wages.

8. In view of the order passed by this Court, the order of dismissal passed against the appellant is liable to be set aside and delay in filing the original application before the Central Administrative Tribunal must be condoned. Accordingly the order of dismissal from service is set aside and the order passed by the Central Administrative Tribunal as well as of the High Court stands set aside and consequent thereupon the original application filed before the Central Administrative Tribunal also stands allowed. The appeal is thus allowed. There will, however, be no order as to costs.