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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: January 30, 2015

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W.P.(C) 885/2015

CT/GD RAMPHAL

..... Petitioner

Represented by: Mr.N.L.Bareja, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Ms.Shiva Lakshmi, Advocate
(CGSC) with Mr. Sushil Kumar
Pandey and Mr.Rahul Chouhan,
Advocate for R-1, R-2 and R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (ORAL)

1. Learned counsel for the respondents who appears on advance copy of the writ petition being served states that since all relevant documents have been filed along with the writ petition it may be heard for disposal today itself.
2. Having joined CRPF as a Constable (GD) on March 13, 2009, on completion of 4 years service on March 13, 2013, the petitioner became eligible to appear at a Limited Departmental Competitive Examination for being appointed as an SI (GD).
3. Petitioner took the LDCE-2014 Examination and was successful but was horrified to learn that his candidature was disqualified on account of the fact that he was treated as being on leave without pay for December 18,

2010, and for which the day in question was treated to be a break in his service.

4. What had happened was this.

5. The petitioner along with Ct.(GD) Veer Singh, Ct.(GD) Bablu, Ct.(GD) Ramesh Meghwal, Ct.(GD) Dilip Kumar, Ct.(GD) Subhash Kumar, Ct.(GD) Rohtash Kumar and Ct.(GD) Sandeep were sanctioned 29 days' leave from November 18, 2010 to December 16, 2010 with permission to suffix December 17, 2010, requiring them to report to the transit camp on December 17, 2010 (AN).

6. All reported late for the reason the train which they took to reach Jammu got late. Each one of them obtained an endorsement behind their travelling warrant from the RTO CRPF of the train being late.

7. They all reported for duty at 45 minutes past midnight on the intervening night of December 19, 2010 and December 20, 2010. The issue of reckoning two days being December 17, 2010 and December 18, 2010 for purposes of leave cropped up.

8. All eight officers had sufficient leave to their credit which they could avail of as earned leave. Surprisingly, for all except the petitioner, two days being December 17, 2010 and December 18, 2010 was adjusted as earned leave and thus the period was regularized.

9. For reason unknown the same Commandant, and it be noted that all force personnel were attached to same Battalion, regularized December 17, 2010 as earned leave for the petitioner and for reasons which we cannot fathom treated December 18, 2010 as leave without salary.

10. The petitioner had no clue of this till when his candidature for being appointed as an SI (GD) came under a cloud. He cleared the Limited Departmental Competitive Examination but was told that December 18,

2010 was treated as a break in service. His representation was considered sympathetically and the Competent Authority sanctioned even the second day as adjustable earned leave as per the leave rules, but this was after more than 2½ years.

11. Some smart fellow in the department, referred to Rule 10 of the CCS Leave Rules and especially the proviso thereunder to question the leave for December 18, 2010 being sanctioned under Rule 10 of the CCS Leave Rules after 2½ years.

12. Rule 10 of the CCS Leave Rules reads as under:-

“Communication of one kind of leave into another

(1) At the request of a Government servant, the authority which granted him leave may commute it retrospectively into leave of a different kind which was due and admissible to him at the time the leave was granted, but the Government servant cannot claim such commutation as a matter of right.

Provided that no such request shall be considered unless received by such authority, or any other authority designated in this behalf, within a period of 30 days of the concerned Government servant joining his duty on the expiry of the relevant spell of leave availed of by him.

(2) The commutation of one kind of leave into another shall be subject to adjustment of leave salary on the basis of leave finally granted to the Government servant, that is to say, any amount paid to him in excess shall be recovered or any arrears due to him shall be paid.”

13. The proviso puts an embargo beyond 30 days for request of a leave to be made retrospectively.

14. This resulted in the impugned signals dated November 26, 2014 followed by the signal dated December 01, 2014 being issued, quashing whereof has been prayed for. Under the two signals the petitioner's leave

which has been sanctioned by the Competent Authority albeit belatedly for December 18, 2010 has been withdrawn and as a consequence he has been declared ineligible to be appointed as an SI (GD).

15. The smart person in the department, with reference to Rule 10 of the CCS Leave Rules overlooked the fact that the petitioner did not make any request beyond 30 days of the leave for the leave to be sanctioned retrospectively. The proviso puts an embargo on the right of the government servant to make a request for leave to be sanctioned beyond 30 days of the date when he has availed the leave.

16. The proviso does not put any embargo on the right of the Competent Authority to undo an apparent wrong. The Competent Authority can sanction a leave availed of at any point of time.

17. We are surprised to note that 8 force personnel, attached to the same battalion were granted leave for the same 29 days' duration with December 17, 2010 as the suffix, requiring all of them to report to the Unit in the afternoon of December 17, 2010. All travelled by the same train to Jammu which got delayed. All reached the camp 45 minutes past midnight in the intervening night of December 19, 2010 and December 20, 2010. For seven, the two days' leave was regularized as earned leave and for the petitioner only one day was regularized as earned leave and the next day was treated as leave without pay resulting in a break in service having cascading effect on his future promotional prospects as also the right to take benefit of the Limited Departmental Competitive Examination-2014.

18. There is complete absurdity in the original order dated January 23, 2011 passed by the Commandant whereunder for seven persons both days' leave was regularized as earned leave but as regards the petitioner only one day was regularized as earned leave. We uphold the subsequent corrective

order, date whereof has not been disclosed to us, whereunder qua the petitioner even second day's leave was regularized as earned leave.

19. We quash the signals dated November 26, 2014 and December 01, 2014.

20. We issue a direction that petitioner's candidature for appointment as a Sub-Inspector (GD) be processed further pursuant to the LDCE-2014 Examination.

21. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 30, 2015
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