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

**Decided on : 24.08.2015**

**+ W.P.(C) 8008/2015 & CM No. 16361-16362/2015**

**VIJAY NATH YADAV**

..... Petitioner

Through: Shree Prakash Sinha, Advocate.

versus

**UNION OF INDIA & ORS**

..... Respondents

Through: Ms. Suparana Srivastava, Advocate  
alongwith Ms. Anushka Arora,  
Advocate for UOI.  
Ms. Smriti Sinha, Advocate for R-2  
and R-3.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

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1. Issue notice. Ms. Suparna Srivastava, Advocate appearing on behalf of the respondents accepts notice.
2. In these proceedings, a direction is sought that the period spent in the BSF be treated as continuity with consequential benefits in the Central Industrial Security Force ("CISF").
3. The petitioner who was working as a Constable in the CISF from 26.03.1996 was selected as a Security Assistant in the Special Protection Group (SPG) on 17.04.2006. While serving in the SPG, he applied for direct recruitment to the post of Sub-Inspector in the Central Police Organisations (CPO) for which a common advertisement and a common

recruitment process was notified. He was duly selected and according to his choice, assigned the Border Security Force (“BSF”). In line with the Recruitment Rules, he had to and did submit his resignation from CISF w.e.f. 22.05.2010.

4. One Kamlesh Kumar Pandey’s selection was found to be irregular on account of his being over-age according to the BSF Rules. He thereafter approached this Court by filing W.P.(C) No. 2304/2011. The Court upheld the decision of the BSF but at the same time was of the opinion that since Shri. Kamlesh Kumar Pandey was not at fault, it would be in the interests of justice that the technical resignation accepted by the CISF should be set at naught and the interregnum period should be regularized. This was directed in the final order in *Kamlesh Kumar Pandey vs. Union of India* (W.P. (C) No. 2384/2011 decided on 26.08.2011), the said operative portion of the order reads as follows:-

*“22. Highlighting that petitioner was working as a Constable in CISF when he submitted his technical resignation and that CISF is willing to take back the petitioner, while dismissing the writ petition and declining relief as prayed for, we direct that upon petitioner rejoining CISF, it would be treated that he has continued to work in CISF. His seniority and pay would not be affected on account of petitioner having technically resigned from CISF. The period interregnum petitioner submitting technical resignation till he rejoins, if he does so within 30 days from today, would be regularized for all purposes including pay and allowances.”*

5. Since it was contended on behalf of Kamlesh Kumar Pandey that others like him i.e. including the present petitioner, Sh. Vijay

Nath Yadav, were retained in service and to take action against him alone was discriminatory, the BSF subsequently issued an order terminating the present petitioner's services also and he was discharged. This caused the petitioner to approach the Court by way of W.P.(C) No. 2450/2012 (*Vijay Nath Yadav vs. Union of India*). Another Bench of this Court while disposing of his writ petition directed as follows:-

*“8. In the circumstances, while the petitioner would not be permitted to continue in service in the BSF because he did not meet the age criteria, he would nonetheless be entitled to costs for these proceedings which are fixed at Rs. 75,000/- to be paid by the Staff Selection Commission within four weeks from today. The petitioner shall be accepted back into service by the CISF treating his technical resignation as non est because his subsequent employment in the BSF has been found to be erroneous. The petitioner cannot be rendered remediless and out of service. His period of service with the BSF would be treated as a continuance in service with the CISF from the date prior to the acceptance/issuance of the technical resignation. The petition is disposed off in the above terms.”*

6. Consequent upon the filing of the judgment, the CISF issued the order impugned in these proceedings on 16.03.2015. The said order reads as follows:-

*“2. In accordance with the judgment order under reference, it has been decided by the competent authority to allow you to join CISF in the rank of Constable.*

*3. Hence, you are hereby directed to report in this Unit to join as Constable/GD within 10 days from receipt of this letter. You may also produce a copy of the relieving order issued from the BSF while joining in this Unit.*

4. *This has the approval of the DIG/GBS New Delhi.*”

7. It is highlighted on behalf of the writ petitioner that inadvertently on account of the operative directions in the two judgments differing, he has been dealt with more severely and made to suffer loss of continuity in service for almost three years. Submitting that the denial of continuity of service and attendant benefits was not conscious and was on account of the judgment dated 19.12.2014 (in this case) overlooking the previous order in *Kamlesh Kumar Pandey (supra)*. Learned counsel urged that it was not the intention of the Court to result in discrimination between two individuals who were recruited under identical circumstances by the BSF.

8. Counsel for the respondents urged that no fault can be found in the impugned order dated 16.03.2015 which complied with the Court’s directions in the petitioner’s case in true letter and spirit. Since, the Court did not direct continuity and protection of the service which the petitioner would have been otherwise entitled to, the normal rule of loss of lien and therefore loss of pay and seniority would apply.

9. It is evident from the above discussion that both Kamlesh Kumar Pandey and the present petitioner were recruited under the same selection/recruitment process by the Staff Selection Commission, in 2010. Both submitted technical resignations upon their success in the combined examination and were assigned the same kind of post i.e. Sub-Inspector in the BSF. Both were found subsequently to be over-aged. Unfortunately, the petitioner was removed/discharged from the BSF after Kamlesh Kumar Pandey was given relief in his writ petition

on 26.08.2011, but was not taken back by the CISF. This fostered entirely unnecessary litigation. Eventually, the petitioner succeeded on 19.12.2014. The Court directed his reinstatement but the order was silent with respect to the continuity and other benefits. Though, CISF in its later orders of 16.04.2015 and 10.04.2015 has redeemed the situation to some extent and directed continuity of service for purpose of seniority, nevertheless for purposes of salary, the impugned order states that the period that the petitioner was out of service i.e. 29.03.2012 to 17.03.2015 (almost three years) would be treated as out of service and that he would be denied pay and allowances.

10. At the first glance, the arguments by the respondents with respect to continuity for salary and continuity for the purpose of increment and allowances appear to be attractive considering that the petitioner did not work. However, the argument in our opinion has to fail. First of all, the petitioner was removed after Kamlesh Kumar Pandey was directed to be reinstated. Predictably, this led to a writ petition which was disposed of on 19.12. 2014 but that order was silent as to continuity. The respondents do not dispute that continuity ought to be granted but have denied the valuable right of continuity for the purpose of salary, increment etc, because this Court did not so direct. This in our opinion has resulted in an arbitrariness and unfairness to the petitioner in the circumstances of the case. Sh. Kamlesh Kumar Pandey's removal and reinstatement were fairly proximate (to each other, in time) and therefore the direction i.e. regularization for all purposes including pay and allowances were granted in the circumstances of that case. However, in the present case, the period of

absence was three years and entirely on account of circumstances beyond the petitioner's control.

11. For the above reasons, it is held that the petitioner is entitled to the continuity of services for all purposes including salary, allowances, fixation of increments etc. The arrears of salary for that period shall be disbursed to him within 10 weeks from today.

The petition is allowed in the above terms.

**S. RAVINDRA BHAT  
(JUDGE)**

**DEEPA SHARMA  
(JUDGE)**

**AUGUST 24, 2015**  
*sapna*

