

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.8074 of 2014

Date of Decision:06.09.2016

Pawan

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Manoj Chahal, Advocate for the petitioner.

Mr. Vivek Chauhan, Advocate for the respondents.

P.B. BAJANTHRI J.

In the instant writ petition, the petitioner has sought for a direction to the respondents to grant arrears of salary for the period 2.4.2009 to 2.1.2011 and seniority in the cadre to which he was appointed w.e.f. 2.4.2009 with all consequential benefits alongwith 18% interest on the delayed payments of arrears from the date of accrual till realization.

The petitioner was appointed as Navik in the Indian Coast Guard. His services have been discharged on the ground that he was medically unfit. Aggrieved by the order of discharge, he approached this Court. This Court set aside the order of discharge on 18.11.2010 in CWP No.9960 of 2010. While allowing the petition on the ground that there is non-compliance of provisions of Rule 26 of Coast Guard (General) Rules, 1986, the petitioner was taken back to duty on 3.01.2011. The respondents have not taken further action except taking the petitioner to duty.

Learned counsel for the petitioner submitted that since order of discharge has been set aside by this Court, consequently, he is entitled for service benefits as well as monetary benefits for the intervening period from

2.4.2009 to 2.1.2011.

On the other hand, learned counsel for the respondents submitted that the petitioner is not entitled for arrears and service benefits. In support of the said contention, he relied on the fundamental rules namely **FR 54 (A) (1) and FR 54 (A) (3)** which reads as under:

*“(a) FR 54(A) (1): Where the dismissal, removal or compulsory retirement of a Govt servant is set aside by a Court of Law & such Govt servant is reinstated **without holding any further inquiry**, the period of absence from duty shall be regularized and the Govt servant shall be paid pay and allowances in accordance with provisions of sub rule (2) or (3) **subject to the direction, if any, of the court**”.*

In the instant case, the High Court has not issued any directions. However, the petitioner was reinstated only after subjecting him to medical examination i.e. holding an inquiry i.e. Medical board, which is a fact finding body, to establish his medical condition.

(b) FR 54(A)(3): If the dismissal, removal or compulsory retirement of a Govt servant is set aside by the Court on the merits of the case, the period intervening between the dates of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsory retired or suspended prior to such dismissal, removed or compulsory retirement, as the case may be.”

It was further contended that this Court while setting aside the order of discharge, considered the issue on technical ground and not on merits. Learned counsel for the respondents further contended that inquiry by means of medical board examination of the petitioner was held and the medical board has given the finding that the petitioner is medically fit.

Thus, he has been continued. Therefore, he is not entitled to service and

monetary benefits.

Heard learned counsel for the parties.

Short question for consideration in the present petition is whether the petitioner is entitled to service and monetary benefits for the intervening period 2.4.2009 to 2.1.2011 as he was discharged from service or not?

Admittedly, the petitioner was discharged from service without compliance of provisions of Rule 26 of Coast Guard (General) Rules, 1986. Thus, the order of discharge has been set aside. Effect of setting aside/quashing of an order has been dealt by the Supreme Court in the case of M/s Shree Chumandi Mopeds Ltd. v. Church of South India Trust Association, Madras 1992(3) SCC 1. Para 10 reads as under:

“In the instant case the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of

the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No.16 of 1991 filed by the appellant company against the order of the learned single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No.126 of 1992, directed against the order for winding up of the appellant company. The said appeal, therefore, fails and is liable to be dismissed.”

Quashing of an order restores the original position as if

discharge order has not been passed in the present case. The order of discharge has been passed by the respondents for no fault of the petitioner, therefore, he cannot be denied the benefits of services as well as arrears of pay during the intervening period. Thus, the petitioner is entitled for the arrears for salary as well as seniority. Learned counsel for the respondents relied on fundamental rules **FR 54 (A) (1) and FR 54 (A) (3)** are not relevant for the present case. Ultimately, the petitioner succeeded before the respondents and the services have been continued. Therefore, even if an inquiry is held and the finding is in favour of the petitioner or against the petitioner still the petitioner is entitled for the arrears of salary for the reasons that order of discharge has been set aside. During the intervening period, he is entitled for arrears of salary and service benefits. In the present case, the petitioner is continued in service even after holding an enquiry like subjecting him for medical board examination again in which he was held to be medically fit. Thus, the petitioner is entitled to arrears of salary for the intervening period from 2.4.2009 to 2.1.2011 and also seniority w.e.f. 2.4.2009 in the cadre of Navik. The same shall be extended by the respondents and the arrears shall be calculated and disbursed to the petitioner alongwith 9% interest within a period of four months from today.

The petition stands allowed.

06.09.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**