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

Date of Decision: May 09, 2016

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W.P.(C). 3426/2007

CT. DRV. ISMAIL KHAN

..... Petitioner

Through: Ms. Rekha Palli, Senior Advocate,
with Ms. Garima Sachdeva and Ms.
Shruti Munjal, Advocates

versus

UOI AND ORS.

..... Respondents

Through: Mr. Roshan Lal Goel, Advocate with
Mr. G.B. Sahu, Pairvi Officer, CRPF

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

HIMA KOHLI, J. (ORAL)

1. The petitioner, who was recruited in the CRPF as a Constable (Driver) in the year 1985, has assailed the order dated 24th September, 2004, passed by the Disciplinary Authority whereunder, he has been reinstated from the date of his joining the Unit, subject to the condition that the period from 28th July, 1995, when the punishment of dismissal from service was inflicted on him, till 1st March, 2004, the date of his reinstatement in service, would be treated as '*dies non*'. Pertinently, the order dated 24th September, 2004, was modified by the Appellate Authority vide order dated 25th April, 2005 whereunder, the punishment of stoppage of increment for one year without cumulative effect imposed by the Disciplinary Authority vide order dated

24th September, 2004, was set aside and the rest of the order was maintained. The order dated 2nd March, 2006, passed on the revision petition preferred by the petitioner had upheld the order passed by the Disciplinary Authority and the Appellate Authority.

2. It is considered necessary to briefly recapitulate the relevant facts of the case. The petitioner was enrolled in the CRPF as a Constable (Driver) on 28th June, 1985. On 13th December, 1994, the petitioner had proceeded on 60 days' earned leave on the ground of his father's illness and thereafter, he had applied for extension of his leave period for 30 days and 70 days, respectively through registered letters/telegrams.

3. The petitioner's version is that he did not receive any reply to the aforesaid letters requesting for extension of leave and thereafter, resumed his duty on 13th July, 1995, but was not allowed to join duty. The petitioner was asked to leave on 26th July, 1995 whereafter, he was served with a dismissal order dated 28th July, 1995. Aggrieved by his dismissal order that was based on an Inquiry Report, a copy whereof was allegedly not supplied to him, the petitioner had initially approached the Central Administrative Tribunal, but the said petition was returned for want of jurisdiction. Subsequently, the petitioner had filed a writ petition in this court, registered as W.P.(C). 224/1999. Vide order dated 16th December, 2003, the Division Bench had disposed of the captioned petition and observed that the respondents had violated the principles of natural justice as they had failed to afford a reasonable opportunity to the petitioner to submit a representation after receiving the report of the Inquiry Officer. As a result, the dismissal order passed against the petitioner was set aside and the respondent was directed to consider his representation and take a fresh decision.

4. It was pursuant to the aforesaid order that the petitioner was reinstated into the service vide order dated 24th February, 2004. However, on 24th September, 2004, the Disciplinary Authority had passed the following order:-

“After examining all important aspects, judgment of Hon’ble High Court, enquiry report documents, representation of delinquent on EO’s report, I fully agree with the findings of the Enquiry Officer No.850877715 Ct./Dvr Mohd Ismail of 100 Bn RAF/CRPF overstayed from leave w.e.f. 11.02.1995 to 27.07.1995 without proper permission / sanction from the competent authority, which is prejudice to the good order and discipline of Force and committed an act of Mis-Conduct under Section 11 (1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules 1995. Considering his length of service, age factor and family backgrounds etc. and after applying mind judiciously, I took a lenient view and impose following punishment under Section 11 (1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules 1955 to commensurate with the offence:-

(i) 28 days Quarter Guard with extra fatigue of punishment drill.

(ii) Stoppage of increment for one year without cumulative effect.

(iii) His absence period from 11.02.1995 to 27.07.1995 will be treated as LHP with no leave salary.

(iv) The order of DIGP RAF issued vide order No.R.XIII.4/04-EC.III dated 24.04.2004 reinstating individual in service w.e.f. 02.03.2004 i.e. from the date of reporting in Unit and regularizing his absence period from 28.07.1995 to 01.03.2004 as Dies-Non will remain operative.

(v) Office order No.W.II.4/95-100/EC.II dated 26.07.1995 declaring individual as deserter is also hereby cancelled.”

5. Aggrieved by the punishment inflicted on the petitioner, as recorded in paras No.(i) to (iv) above, the petitioner had preferred an appeal, which was

disposed of by the Appellate Authority in the following manner:-

“In spite of the facts the appeal is time barred yet appeal has been considered. I have applied my mind judiciously and find that the punishment awarded in the instant case is according to the procedure of law and quantum necessitated, however, the disciplinary authority has missed an important point that when more than one punishment are to be awarded under Section 11 of CRPF Act read with Rule 27 of CRPF Rules 1995, these have to be strictly as mentioned in CRPF Act Section 11. To that extent, I find awarding 28 days Q.G. with Extra Fatigue of punishment drill will meet the ends of justice in the instant case and therefore the punishment of stoppage of increment for one year with cumulative effect is set aside as it is against the spirit of Section 11 of CRPF Act. Rest of orders i.e. regularization of absence period w.e.f.11.02.1995 to 27.07.1995 as LHP with no leave salary and 28.07.1995 to 01.03.2004 as dies non are not punishment and rather administrative order for regularization of leave and pay and allowances etc. shall remain as such.”

6. The aforesaid order was upheld by the revisional authority vide order dated 2nd March, 2003, passed on the petitioner's revision petition.

7. Ms. Palli, learned senior counsel appearing for the petitioner, submits that once the order of dismissal dated 28th July, 1995 inflicted on the petitioner was set aside and he was reinstated into service vide order dated 24th February, 2004, then the respondent had erred in treating the period from 28th July, 1995 to 24th February, 2004 as 'dies'-non' and wrongly denied him the benefits of continuity of service, seniority, promotion, pension, etc.. To substantiate her submission that the petitioner cannot be denied continuity of seniority, promotion, pension, etc., learned senior counsel relies on a judgment dated 21st December, 2015 in the case of P. Rajan v. Union of India and Ors., passed in W.P.(C). 11902/2015.

8. *Per contra*, learned counsel for the respondents opposes the present petition and submits that the unlike facts in the case of P. Rajan (supra), where the period of unjustified absence was for 35 days, the petitioner herein had remained on leave without permission for over five months and therefore, he cannot claim the same relief as granted in the captioned case.

9. We are of the opinion that once the order dated 24th February, 2004 was passed by the Disciplinary Authority reinstating the petitioner into service, the period for which he had remained absent loses its significance. The only question that engages us here is whether, the period from 28th July, 1995, the date of the dismissal of petitioner from service, upto 2nd March, 2004, the date of the petitioner's reinstatement, ought to be treated as '*dies-non*'.

10. No doubt, the petitioner would not be entitled to any salary for the relevant period, which has been treated as '*dies-non*' on the principles of '*No work, No pay*', However, that cannot be a ground for disentitling the petitioner to the relief of continuity of service, seniority and other increments to which he would have been automatically entitled on reinstatement into service. In other words, once the respondents had decided to reinstate the petitioner, his continuity in service ought not to have been disturbed. Any decision to the contrary would be unwarranted and unjustified in the facts of the present case.

11. Further, the facts of the case in hand, as noted above, reveal that the dismissal order was passed in respect of the petitioner on 28th July, 1995 and he had challenged the same before the Central Administrative Tribunal in November, 1995. The said petition was however dismissed for lack of jurisdiction and in the year 1999, the petitioner had filed a writ petition in

this court, which was disposed of vide order dated 16th December, 2003. In less than two months from the date of the disposal of the said writ petition, the respondent had reinstated the petitioner into service vide order dated 24th February, 2004.

12. In this background, it cannot be stated that the petitioner had been dragging his feet in the case or had approached the court with unexplained delay, which would disentitle him to relief. In these facts and circumstances as detailed above, the impugned order dated 24th September, 2004, upheld by the Appellate Authority vide order dated 25th April, 2005, cannot be sustained and the same is accordingly modified to the extent that the period between 28th July, 1995 to 1st March, 2004, when the petitioner had re-joined his duties, shall have to be taken into consideration for purposes of granting him continuity in service, seniority, increments, etc.. However, the petitioner would not be entitled to any arrears of salary on the principles of '*No work, No pay*'. He shall only be entitled to reinstatement and other consequential benefits that may have accrued to him in accordance with law.

13. The petition is allowed to the limited to extent indicated above, with no orders as to costs.

HIMA KOHLI, J

SUNIL GAUR, J

MAY 09, 2016

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