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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : July 08, 2016

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W.P.(C) 11135/2005

SUMER SINGH

..... Petitioner

Represented by: Dr.Ashwani Bhardwaj, Advocate

versus

UOI & ORS

..... Respondents

Represented by: Ms.Monika Arora, CGSC for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Removed from service as a result of ex-parte disciplinary proceedings conducted against him, the petitioner filed W.P.(C) No.7020/1999 in this Court which was allowed vide order dated November 13, 2002 resulting in the petitioner being reinstated in service. Right of CISF, of which the petitioner was an employee, to conduct fresh disciplinary proceedings being kept intact, after serving the petitioner the department initiated fresh proceedings and concluded the same; resulting in penalty of reduction to the lower rank of constable for a period of one year being inflicted.
2. The petitioner does not challenge the penalty imposed.
3. Case of the petitioner is that while allowing W.P.(C) No.7020/1999 the direction issued by the Division Bench was as under:-

“The impugned order of removal from service of the petitioner pursuant to ex-parte enquiry shall stand set aside. He shall be reinstated in service

without any back wages and subjected to a fresh inquiry under Rules which shall be completed and appropriate order passed in the matter within four months from the receipt of the order. If petitioner version is accepted, the disputed intervening period from the date of his removal shall be dealt with by the Competent Authority under rules.”

4. Challenge in the writ petition is to an order dated January 20, 2004 treating the intervening period between the date of removal from service till reinstatement i.e. from April 09, 1997 till April 20, 2003 as Dies Non for purposes of service in accordance with Rule 55 of the CISF Rules, 2001.
5. Case of the petitioner is simple. The Department was responsible for not following the due process contemplated by law which resulted in the penalty of removal from service being inflicted vide order dated April 09, 1997; which order was set aside by a Division Bench of this Court. As a consequence the petitioner was reinstated in service. Thus, as per the petitioner, the period in question cannot be treated as Dies Non.
6. Since the issue of back wages, not being payable to the petitioner, has been set at rest by the order dated November 13, 2002, the petitioner does not claim any back wages.
7. Having heard learned counsel for the parties we observe that concededly the previous inquiry was held to be vitiated. Such being the case, upon setting aside of the previous penalty, as a matter of course, the period interregnum removal from service till reinstatement in service should be required to be treated as having spent in service sans financial benefits. Treating the period as Dies Non is too severe a consequence for CISF to impose.

8. In a similarly circumstanced case, allowing W.P.(C) No.6833/2004 ASI Ranbir Singh Solanki Vs. UOI & Ors., where previous ex-parte inquiry was found to be vitiated, the Division Bench set aside the order directing that period interregnum removal from service till reinstatement qua Ranbir Singh Solanki should be treated as dies non.

9. Accordingly, we allow the writ petition and quash the order dated November 13, 2002 in so far it requires the period interregnum April 09, 1997 till April 20, 2003 to be treated as Dies Non. The petitioner would not be entitled to arrears of salary for said period. But, the period would be treated as having been spent in service for all other purpose.

10. CISF shall now issue consequential orders within six weeks and do the needful.

11. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 08, 2016
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