

\$~R-35

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

+ **W.P.(C) 23013/2005**

Decided on : 02.02.2016

IN THE MATTER OF:

S.K. GIRI

..... Petitioner

Through: Mr. R.V. Sinha with Mr. A.S. Singh,
Advocates

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Barkha Babbar, CGSC

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

HIMA KOHLI, J. (Oral)

1. The petitioner, who, at the time of filing the present petition, was working on the post of a Sub Inspector in the respondent/CISF, has raised a two fold grievance in the present petition. Firstly, a writ of mandamus has been sought against the respondents for not crediting earned leaves of 180 days in his leave account earned by him prior to his illegal removal from service. Secondly, the petitioner had prayed for directions to the respondents to post him in the newly constituted Fire Service Cadre and to consider him for promotion in the said cadre at par with similarly placed officers.

2. It is considered necessary to recapitulate the facts of the case which are as follows. On 16.12.1997, the petitioner was recruited as a

Security Guard under the respondent/CISF. Between 21.6.1976 to 28.8.1976, the petitioner had attended a Fireman Course at Durgapur and had qualified in the said course. In September, 1981, the petitioner was promoted as a Head Constable. In the year 1983, the petitioner was charge-sheeted for an incident that had occurred at the Rourkela Steel Plant at Orissa on 25.1.1983, when as per the respondents, while he was on duty, a large number of persons had entered the plant in the late hours of the day and were found illegally removing coal from there. In an inquiry that was conducted, the aforesaid misconduct was proved against the petitioner and a penalty of removal from service was inflicted on him by the Disciplinary Authority on 23.4.1984.

3. Aggrieved by the said order, the petitioner had filed a writ petition in the High Court, which was dismissed vide judgment dated 11.11.1986. The petitioner had challenged the aforesaid decision by filing an appeal before the Supreme Court, registered as Civil Appeal No.7456/1995, which was allowed vide judgment dated 21.8.1995 with an observation that the punishment awarded was severely disproportionate and deserved to be set aside. As a result, the petitioner was directed to be reinstated and was held entitled to salary and all other benefits w.e.f. 1.1.1995, with further directions that the

period from 24.4.1984 upto the date of his reinstatement would be treated as in continuity of service and the petitioner's salary would be re-fixed.

4. Consequently, the petitioner was reinstated by the respondents and was granted all the benefits, to which he was entitled. He had continued to remain in service till 31.5.2006, when he superannuated on the post of a Sub Inspector. A few months short of his superannuation, the petitioner had filed the present petition for seeking directions to the respondents to credit the leave of 180 days earned by him prior to his illegal removal from service and to post him in the Fire Service Cadre.

5. Mr. Sinha, learned counsel for the petitioner states at the outset that the relief for crediting the earned leave of 180 days has been rendered infructuous as during the pendency of the present petition, the respondents have on their own credited the leave in the petitioner's leave account. The second relief with regard to non-posting of the petitioner in the Fire Service Cadre, however survives for consideration in this petition.

6. We have perused the stand taken by the respondents in the counter affidavit. As per the respondents, fire fighting training was imparted to volunteers of the security wing to handle fire fighting

equipment/accessories, etc., for the smooth running of the Fire Wing inducted in public sector undertakings and for dealing with any fire emergencies. Prior to 12.01.1991, the said training was however of no consequence for purpose of absorption/promotion etc.

7. On 12.1.1991, a separate Fire Service Cadre came up following the notification of its Recruitment Rules. As per the said Recruitment Rules, for the initial constitution of a separate Fire Service Cadre, options from fire trained security wing personnel (Non-Gazetted) were required to be exercised within a period of six months from the date of notification of the Recruitment Rules in the Gazette, i.e., between 12.1.1991 to 11.7.1991. Vide letter dated 22.04.1991, options were called from fire trained executive personnel for considering their case for absorption in the separate Fire Service Cadre.

8. Pertinently, when the aforesaid letter was issued by the respondents inviting options, the petitioner had been removed from service and therefore he could not have exercised his option. Such of the personnel in the respondent/CISF, who had exercised their option within the prescribed period, were considered by the respondents and those found fit, were absorbed in the Fire Service Cadre w.e.f. 14.10.1991. Prior thereto, when the approved Recruitment Rules for creating a separate Fire Service Cadre were under the process of being

notified, a Circular dated 23.11.1990 was issued by the respondents for obtaining options from the fire trained security wing personnel, but the said options were kept in abeyance to await notification of the Recruitment Rules.

9. Six years down the line, in the year 1997, keeping in view the fact that a large number of vacancies were existing in the Fire Service Cadre, the respondents decided to consider the options exercised in response to the Circular dated 23.11.1990 and vide letter dated 23.03.1997, fresh willingness was asked for from the fire trained executive personnel. Pertinently, by then the dismissal order passed against the petitioner had been set aside by the Supreme Court, vide judgment dated 21.8.1995 and he had been reinstated in service.

10. Though a letter dated 23.12.1997 was circulated by the Directorate General, CISF to all the Commandants to consider cases for absorption in the Fire Service Cadre, subject to suitability and to summon the service particulars in respect of the personnel mentioned in the list enclosed with the said letter and obtain their consent, the petitioner did not approach the respondents with any representation for being considered at that point in time by explaining that he could not have applied in response to the Circulars dated 23.11.1990 or 22.4.1991 as at that stage, he was not on the rolls, having been

dismissed from service.

11. As per the respondents, the personnel who had given their fresh willingness, were considered and those found fit on merits were absorbed retrospectively in the Fire Service Cadre, i.e., w.e.f. 14.10.1991, in the equivalent rank that they were holding at the time of exercising their option in the Executive wing.

12. Learned counsel for the respondents urges that the petitioner was ineligible for being considered for absorption in the Fire Service Cadre as the option had been exercised by the personnel between 23.11.1990 to 11.7.1991 and during the said period, he had been removed from service. The said explanation is unfounded for the reason that the petitioner's orders of removal from service had been washed away by the Supreme Court much later, vide judgment dated 21.8.1995. However, the petitioner had been reinstated in service thereafter and had he applied in response to the letter dated 23.12.1997 circulated by the respondents, he would have been well entitled for being considered on merits for absorption in the Fire Service Wing of the respondents and such an application could certainly not have been turned down by the respondents merely because the petitioner was not in a position to exercise the option between 23.11.1990 to 11.7.1991. But for reasons best known to the

petitioner, he had elected not to submit any representation to the respondents at the relevant time for being considered for appointment in the Fire Service Cadre. Instead, the petitioner had belatedly submitted representations dated 21.8.2001 and 30.5.2002 for being absorbed in the Fire Service Cadre.

13. Admittedly, an actionable cause of action had accrued in favour of the petitioner after his reinstatement in the year 1996-97. Having failed to receive any positive response from the respondents, the petitioner ought to have agitated his grievance promptly by approaching the Court within a reasonable time reckoned from the year 1997. However, he opted to remain silent from 1997 right upto 2005 i.e. for almost seven years and filed the present petition on the eve of his superannuation.

14. Given the above facts and circumstances, we are of the opinion that having failed to exercise his right which was available to the petitioner immediately upon his reinstatement pursuant to the judgment dated 21.8.1995, pronounced by the Supreme Court or at least in the year 1997 when the respondents had issued a Circular dated 23.12.1997 for considering cases for absorption in the Fire Service Cadre, there is no justification for him to have remained a silent spectator. The petitioner has slept over his rights for too long.

There is an unexplained and inordinate delay on the part of the petitioner in seeking his legal remedies. Delay and latches is an important factor which weighs with the Court while exercising its discretion under Article 226 of the Constitution of India.

15. We are further informed that after his reinstatement, the petitioner was granted two promotions, firstly to the post of Assistant Sub-Inspector and later on, to the post of Sub Inspector at which post he had finally superannuated. The petitioner having superannuated on 31.5.2006 on the post of a Sub Inspector and having admittedly received all the benefits to which he is entitled, by way of re-fixation of salary, continuity of service and credit of leave encashment, the matter ought to rest there.

16. We are, therefore, not inclined to grant any further relief to the petitioner of posting him in the Fire Service Cadre as prayed for. The petition is dismissed, while leaving the parties to bear their own costs.

(HIMA KOHLI)
JUDGE

(SUNIL GAUR)
JUDGE

FEBRUARY 02, 2016/sk/ap/rkb