

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.24526 of 2002

ORDER :

Heard the counsel for petitioner, and Smt. Chintalapudi Lakshmi Kumari, counsel for respondents.

2. The petitioner herein was employed in the South Central Railway as Constable in the Pay Scale of Rs.950-1400/-.

3. He was medically de-categorised and declared unfit for B-1 category and fit for C-1 category, vide proceedings dt.14.03.1996. He was subsequently discharged on 02.11.1996. His daughter was also granted appointment on compassionate grounds in Group 'C' Post.

4. Thereafter, the petitioner gave a representation on 19.09.2001 to the 1st respondent to treat him as 'on duty' between the period 24.03.1990 to 27.07.1990 (during which he was placed under suspension on a charge of desertion of duty between 17:20 hrs to 18:00 hrs on 21.03.1990 during his 14 to 22 hours shift duty at Akola on 21.03.1990, and for mis-behaviour with another official apart from failure to attend enquiry on 30.03.1990 in the enquiry against the said official).

5. By proceedings dt.19.09.2001, the 1st respondent rejected it stating that the period from 24.03.1990 to 27.07.1990 was treated as suspension period only and that no increment or arrears of pay or

relief was granted for this period, and it was treated as non-qualifying service.

6. Assailing the same, petitioner filed the present Writ Petition seeking treatment of the period 24.03.1990 to 27.07.1990 as the period during which he was on duty and also to grant increments for this period; the period from 16.08.1995 to 29.01.1998, i.e., the date of his admission into Hospital till the date of his discharge, as also periods spent on duty for grant of increments; and seeks revision of pension and payment of arrears by grant of increments due for the said period.

7. The counsel for petitioner places reliance on proceedings dt.20.12.2002, wherein suspension period from 24.03.1990 to 27.07.1990 of the petitioner was treated as 'on duty'. However, the very same order mentions that the increment payable to petitioner on 01.01.1991 was withheld for a period of 2 years vide proceedings dt.05.02.1991 in D.O.No.23/91 of the DSC/HYB.

8. It may be that the period of suspension from 24.03.1990 to 27.07.1990 was treated as 'on duty' so that there is no break in the service of petitioner. But that does not mean that the increments of petitioner, which have been withheld by the order dt.05.02.1991 as a measure of punishment for the misconduct for which he was placed under suspension for the said period, were restored to petitioner.

9. It is not the case of petitioner that the said punishment has been cancelled by any subsequent order passed by the Railways and he became entitled to the same. Therefore, there is no question of granting any increments to petitioner which have been withheld as a measure of punishment by the order dt.05.02.1991.

10. Coming to the claim of petitioner of treating the period from 16.08.1995 to 29.01.1998, i.e., the date of his admission in Hospital on account of leg injury till the date of his discharge, as 'on duty' and also to grant increments for this period is concerned, it is not in dispute that petitioner had been discharged from service on 02.11.1996. Therefore, the petitioner cannot seek to treat any period after the said date as period where he was in service for any purpose.

11. As regards the period from 16.08.1995 to 02.11.1996 is concerned, he was admittedly unwell and was sanctioned 180 days leave from 15.03.1996 to 10.09.1996, and subsequently 52 days extraordinary leave from 11.09.1996 to 01.11.1996. He was declared unfit on medical grounds on 02.11.1996 itself.

12. If the petitioner had been aggrieved by denial of any service benefit for the period 16.08.1995 to 02.11.1996, he ought to have agitated for the same immediately. However, he kept quiet and raised the issue for the first time in the Writ Petition filed in November, 2002. No explanation is forthcoming from the petitioner why he did not raise this issue at the earliest point of time.

13. I am therefore of the opinion that the petitioner is not entitled to any relief even for the said period.

14. Accordingly, the Writ Petition is dismissed. No order as to costs.

15. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-10-2017

Ndr/*

