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

+ W.P.(C) 84/2016

CHUHAR SINGH Petitioner

Through: Mr.Anuj Aggarwal with
Ms.Deboshree Mukherjee, Advs.

versus

UNION OF INDIA & ORS Respondents

Through: Ms.Anjana Gosain with Mr.Vishu
Agrawal & Mr.Rahul Singhal, Advs.
with SI/M Rajnish Prasad Shukla.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **10.02.2017**

The petitioner was appointed a Constable (General Duty) of the Central Reserve Police Force (CRPF) on 24th March, 2001 and was posted at the Office of the Commandant 74th Battalion, CRPF, Imphal (Manipur) on 02.08.2011. The petitioner was, thereafter, transferred to Delhi and deployed at 103, Rapid Action Force, Delhi where the petitioner is still serving.

It appears that the petitioner remained absent for six days from 04.11.2002 to 09.11.2002. This period of absence was regularized by the respondents as half pay leave without salary and allowances as would appear from signal No. R.II-I/2014-103-EC-II dated 17.05.2014 being Annexure P-2 to the writ petition.

On or about 31.05.2011, the Deputy Inspector General of Police

(Recruitment) released 335 vacancies to be filled up through a Limited Departmental Competitive Examination.

The petitioner who had the requisite eligibility applied for the Limited Departmental Competitive Examination 2011 and was allotted Roll No.12786 against the Scheduled Caste category. The petitioner qualified in the first stage of the process of selection i.e. the stage of checking of service records.

The petitioner thereafter appeared for a written examination at Jalandhar in Punjab. The results of the examination were declared on 10.08.2011. The petitioner was declared qualified. It is alleged that the name of the petitioner appeared in the list of candidates of the OBC category and not in the list of category of the candidates for Scheduled Caste category. Thereafter, the petitioner made a representation for change of his category. No action was taken, whereupon the petitioner made further representation.

It is stated that after receipt of the representation, the DIG, CRPF Headquarters ordered the 103, Rapid Action Force Battalion to furnish various details pertaining to the petitioner, such as, his Caste certificate, his Annual Confidential Report during the last 10 years and the list of punishments, if any, awarded to the petitioner.

On 17th May, 2014, the Commandant 103, RAF Battalion issued a signal order dated 17.05.2014 rejecting the candidature of the petitioner on the ground that 6 days absence in November 2002, treated as leave on half pay constituted non-qualifying service.

It appears that the absence of the petitioner for 6 days had duly been regularized and treated as half pay leave as would appear from

the signal order being Annexure P-2 to the writ petition. There is not a whisper in the signal order indicating that his service during the period in question was treated as non-qualifying service.

Our attention has been drawn to Rule 25 of the Central Civil Service (Leave) Rules, 1972, which provides that unless, the authority competent to grant leave extends the leave, a Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave, to the extent such leave is due. The period in excess of the period for which such leave is due on half pay's is to be treated as extraordinary leave.

A perusal of the aforesaid rule indicates that absence beyond sanctioned leave has to be debited against the leave account of employee, as though it was half pay leave to the extent such leave was due. It is nobody's case that no leave was due to the petitioner. However, as his absence was initially unauthorized in the absence of sanctioned leave, his absence had to be debited against his leave account as half pay leave and if there was no leave available to his credit, such leave was to be treated as extraordinary leave. It is reiterated at the cost of repetition that the petitioner had leave to his credit.

Sub rule 2 of Rule 25 provides that wilful absence from duty after expiry of leave renders a Government servant liable to disciplinary action. There are government orders which require that a Government servant who remains absent without any authority should be proceeded against immediately and this should not be put off till

his absence exceeds the limit prescribed in Rule 32(2)(a) of the CCS (Leave) Rules, 1972.

It is reiterated that it is nobody's case that the leave exceeded the limit prescribed in Rule 32(2) (a). No disciplinary action was initiated against the petitioner. On the other hand, his leave was regularized as half pay leave, but without pay. In other words, from his leave account half pay leave was debited. He remained without pay. Leave without pay in itself does not amount either to break in service or to non-qualifying service (NQS). Leave is regularized. In bona fide cases of absence, where a person does not have leave to his credit, the person may be treated as on extraordinary leave without pay.

Counsel appearing on behalf of the respondents has referred to the Pension Rules. As per Rule 21 of the Pension Rules, leave during service, for which leave salary is payable, and all extraordinary leave granted on medical certificate, are to count as qualifying service. The proviso reads that in case of extraordinary leave other than extraordinary leave granted on medical certificate, the Appointing Authority may at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant due to inability to join or rejoin duty on account of civil commotion or for prosecuting higher scientific and technical studies.

The Pension Rules have no application at this stage and in any case, do not override Rule 25 of the CCS (Leave) Rules, 1972. Moreover, the rule provides that all leave during service for which

leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service. It is mandatory to treat leave for which salary is payable and also extraordinary leave granted on medical ground towards qualifying service. There is no negative stipulation in the rule that any other leave, even if regularized will not count towards qualifying service. On the other hand, the proviso in itself provides that even in case of extraordinary leave other than extraordinary leave granted on medical certificate, the Appointing Authority may allow the period of that leave to count as qualifying service in certain circumstances. In any case, this is not a case of extraordinary leave. The petitioner had leave to his credit. The unauthorized leave of 6 days has been regularized as half pay leave without pay. The word 'regularized' has been used in the Signal Order concerned. It cannot now be said that such regularized leave should not count towards qualifying service.

Once leave has been regularized, it cannot be treated as a blemish in service records. Of course, this observation is not to be construed as any finding of this Court that habitual absence and/or habitual leave would not be a blemish on one's service records.

Even otherwise, in our view, penalization of a candidate by denial of future prospects for absence of 6 days of leave and that too when the absence has been regularized as half pay leave without pay, would not only be arbitrary, unreasonable and harsh, but wholly disproportionate to the gravity of the offence.

The writ petition is allowed. The impugned orders are set aside. The period of leave of 6 days which has been regularized as

half pay, leave without pay, shall not be treated as period of non-qualifying service and / or break in service. The candidature of the petitioner shall be considered in accordance with law in the light of the observations made above.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

FEBRUARY 10, 2017/gm