

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

% Judgment delivered on: 26th May, 2017

+ W.P.(C) 4376/2015

HANUMAN SARAN

.... Petitioner

versus

UOI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.Satyawrat Sharma & Mr.Yatinder
Sharma, Advs.

For the Respondents : Mr.Ruchir Mishra & Mr.Mukesh Kr.Tiwari,
Advs. along with Mr.S.S. Sejwal, Law
Officer, CRPF.

CORAM:-

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

C. HARI SHANKAR, J.

1. The short question that arises for consideration, in the present writ petition, is whether the decision, of the Commandant 37 Battalion Central Reserve Police Force (CRPF), to treat the period, between 02.02.1991 to 17.03.2012, during which the petitioner remained absent from service, as “non duty”, is legally sustainable or not.

2. A brief reference to the relevant facts would be apposite. The petitioner- Hanuman Saran-resident of Village Rithala, was employed

as Constable (CT), in the Central Reserve Police Force (CRPF) on 21.03.1998. His services were terminated vide order dated 01.02.1991, passed under Rule 5 (1) of the Central Civil Service (Temporary Services) Rules, 1965. The said order of termination reads thus:-

“In pursuance of the proviso to Sub-Rule 91 of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, I, M.M. Sharma, Commandant hereby terminate forthwith the service of No.881191332 CT Hanuman Saran of F-37 Bn and direct that he shall be entitled to claim a sum equivalent to the amount of the pay plus allowances for the period of notice of the same rates to which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month.”

3. The appeal, preferred by the petitioner against the said order of termination of his services, was rejected by the Directorate General CRPF, vide order dated Nil.09.1993, which reads as under:-

“No.881191332 Ex-Constable Hanuman Saran was recruited as a Constable in Group Centre, CRPF, New Delhi w.e.f. 21.04.1998. His services were subsequently terminated under the provisions of sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 vide commandant 37 Bn. vide C/O No.V.V-1/91-37-EC-1 dated 02.02.1991. Individual has made a representation against the said order. His representation has been

examined in detail and it is noticed that the termination of service in respect of Ex-Constable No.881191332 Hanuman Saran ordered by the Commandant 37 Bn. vide office Order No. D.V.-1/91/37-EC-1 dated 02.02.1991 is in order as per rules on the subject. As there is no merit in the representation of Ex-Constable No. 881191332 Hanuman Saran the same is rejected.”

4. The petitioner initially moved the High Court of Allahabad, by way of Writ Petition 22502/1994, challenging the termination of his services and the rejection of the appeal preferred by him thereagainst. The said writ petition was, however, dismissed as withdrawn, on 31.03.1997, for want of territorial jurisdiction.

5. The petitioner, consequently, moved this Court by way of W.P.(C) No. 3237/1997, challenging the termination of his service and the rejection of the appeal preferred by him thereagainst. It was contended, by the petitioner, that his services had been terminated only because Respondent No.2 had been unable to verify the petitioner's character and antecedents, as no one was found residing at the address given by the petitioner. That this was the reason for the petitioners termination also stands borne out by the counter affidavit filed by Respondent No.2 in the said writ petition.

6. W.P.(C) No. 3237/1997 was allowed by this Court vide judgment dated 25.07.2011 holding that the inability, of Respondent No.2, to verify the character and antecedents of the petitioner was

apparently attributable to the fact that Rithala was an unauthorized colony having private residential numbers. In the opinion of this Court, in such a situation, it was the duty of the officers to contact the petitioner and seek his help in obtaining the address for locating and carrying out the necessary verification of character and antecedents, and termination of the petitioner, for want thereof, was, *ex-facie*, unjustified. Consequently, the orders dated 02.02.1991 (supra) and 09.09.1993 (supra), whereby the petitioner's services were terminated, and the appeal preferred him thereagainst rejected, were quashed, and the petitioner was directed to be reinstated in service. It was held, further, that no purpose would be served by directing verification of the character and antecedents of the petitioner at such a late stage, especially as there was no allegation of anything wanting in the petitioner's character, and no records would be traceable at that point of time. While thus directing reinstatement of the petitioner in service, this Court, however, left it open to the Competent Authority to pass an appropriate order, "under FR-54", with respect to the manner in which the period between the termination of the petitioner's service and his reinstatement had to be reckoned. Para 17 of the judgment of this Court read thus:

"We leave it open to the Competent Authority to the respondent to pass an appropriate order contemplated by FR-54 with respect to the manner in which the period post petitioner being terminated from service till reinstated has to be reckoned."

7. In compliance with the directions as contained in the above judgment dated 25.07.2011, of this Court, the Commandant, CRPF wrote, on 31.08.2011, to the petitioner, directing him to mark his presence in the Battalion immediately. Vide subsequent communication dated 06.09.2011, however, the Commandant withdrew the said letter dated 31.08.2011 till receipt of the final decision from the office of Director General Police (CRPF). This was followed by yet another communication, dated 10.03.2012, from the Commandant to the petitioner, again directing the petitioner to mark his presence in the Battalion, though the decision on the arrears of to pay and allowance payable to the petitioner it was stated, were awaited from the Ministry of Home.

8. As directed in the said letter dated 10.03.2012, the petitioner rejoined services with the CRPF on 17.03.2012. The petitioner's basic pay for the month of April, 2012 was fixed at Rs.6,680/-

9. On 24.09.2012, the Police Inspector General (Law) Directorate, in the CRPF, passed an order, granting the petitioner 50% of the back wages due payable for the period during which the petitioner had remained absent from service, i.e. 02.02.1991 to 17.03.2012. The said amount of Rs.5,24,322/-, it appears, was subsequently paid to the petitioner.

10. The grievance of the petitioner, in the present case, stems from the next communication, dated Nil.09.1993, by the Commandant to the petitioner, which regularized the period of absence of the petitioner, from 02.02.1991 to 17.03.2012, as “non duty”. The said order merits reproduction, in extenso, as under:-

“The Employee Force No.881191332 Constable/GD Hanuman Saran of this Battalion was terminated by this Office vide Office Order No.D.Five.01/91/37-ST-ONE dated 02.02.1991 with effect from 02.02.1991. The employee therefore filed as case before Hon’ble High Court of Delhi against the termination Order. The Hon’ble High Court of Delhi vide its Judgment dated 25.07.2011 passed an order to re-instate the employee. Vide letter No.I.TWO.180/1997-LWLWP-ONE dated 09.03.2012 and 13.03.2012 of Deputy Inspector General (Law), the employee was reinstated as constable/GD on 17.03.2012 (afternoon) vide office Order No.P.Eight.01/2012-37-ST-Two, dated 30.03.2012. Vide order of Police Inspector General (Law) Directorate, CRPF, New Delhi, dated 24.09.2012, the employee has been granted 50% back wages for his period of absence.

The period from 02.02.1991 till 17.03.2012 of the employee was absence period as the employee remained out of service. Absence period between 02.02.1991 to 17.03.2012 i.e. 21 years 1 month and 13 days is regularized as non-duty.”

11. Consequential order was passed, by the DIG Police, addressed to the petitioner, on 09.02.2013, stating that, as the period from

02.02.1991 to 17.03.2012 was treated as “non duty”, the petitioner’s pay, w.e.f. 01.01.2016, was fixed at Rs.6460/- plus Rs.2000/-, and the petitioner was not entitled to any pay or increments for the said “non duty” period. Again, consequently, the petitioner’s basic pay, for the month of October 2014, was only Rs.6720/-.

12. It was under these circumstances that the petitioner re-approached this Court by way of the present writ petition. The grievance of the petitioner, voiced in the writ petition, is primarily against the reduction of the salary and the treatment, by Respondent No.2, of the period from 02.02.1991 to 17.03.2012, during which he remained absent from service, as “non duty”, resulting in the petitioner becoming disentitled to various benefits, such as seniority, continuity of service, increments, etc. The prayer clause in the writ petition reads as under:

“In the circumstances mentioned above it is most respectfully prayed that this Hon’ble Court be pleased to:

A. *Direct the Respondents by way of Writ of mandamus to fix the salary of the Petitioner keeping in view the Petitioner’s date of joining i.e. 21.03.1998.*

B. *Issue Writ of Mandamus directing the Respondents to pay admissible Dearness Allowance to the Petitioner for the entire period of his service till he was reinstated on 17.03.2012 from the date of*

his termination i.e. for 21 years as per Govt. guidelines.

C. Issue Writ of Mandamus directing the Respondents to fix seniority in the post with regard to his date of joining i.e. 21.04.1988 in CRPF and further direct the Respondents to initiate process granting benefits of schemes like MACP for career progression.

D. Direct the Respondent to treat the period of termination as qualifying period for the computation of service benefits.

E. Pass such other order as this Hon'ble Court may deem fit and proper in the interest of justice."

13. When the present writ petition was listed for preliminary hearing before this Court on 01.05.2015, the learned counsel appearing for the petitioner stated that the petitioner was not pressing for full arrears of salary but "would be happy if while paying 50% salary notional increments are given and the period interregnum dismissal and reinstatement in service be treated as spent on duty for pensionary benefits."

14. This Court, therefore, directed the respondents to keep this aspect of the matter in view while filing counter affidavit. As such, by virtue of the statement made by the learned counsel appearing for the petitioner before this Court on 01.05.2015, the only issue for decision surviving, in the present proceedings, is relating to the treatment of the

period during which the petitioner remained absent from service, i.e. the period from 02.02.1991 to 17.03.2012.

15. The respondents have filed a joint counter affidavit, contending thus:

(i) By virtue of FR-52, the pay and allowances of a dismissed/removed Government servant ceased on such dismissal/removal.

(ii) The petitioner had not challenged the orders, dated 30.03.2012, 21.01.2013 and 09.02.2013. No relief, therefore, could be granted to him.

(iii) Inasmuch as the judgment, dated 25.07.2011, of this Court in W.P (C) No.3237/1997 only directed the petitioner to be reinstated in service, and respondent No.2 to pass an order under FR-54, both directions stood complied with, and nothing remained to be granted to the petitioner.

(iv) The pay of the petitioner had been correctly fixed as the period of his absence had been regularized as “non duty”.

16. Conspicuously, there is no other justification forthcoming, in the counter affidavit filed by the respondents, for the decision to treat the period of absence of the petitioner from duty as “non duty”.

17. We have heard Mr.Satyawrat Sharma, appearing for the petitioner and Sh. Ruchir Mishra, appearing for the respondents and perused the material available on record. Both counsel basically reiterated the contentions advanced in their respective pleadings.

18. As already stated hereinabove, the only issue that arises for consideration, in the present case, is as to whether the period of absence from service, of the petitioner, from 02.02.1991 to 17.03.2012, could be regularized as “non duty”.

19. The decision, of Respondent No.2, to regularize the period of absence from service, of the petitioner, as “non duty”, is stated to have been passed in compliance with the directions contained in para 17 of the judgment, dated 25.07.2011, of this Court in W.P (C) No. 3237/1997, whereby it was left open to the Competent Authority “ to pass an appropriate order contemplated by FR-54 with respect to the manner in which the period post petitioner being terminated from service till reinstatement has to be reckoned”. We may say, here, that the reference, in this para, to FR-54 does not appear to be entirely apposite, inasmuch as the provision which appears to be appropriately applicable is not FR-54 but FR-54A. For ready reference, sub-Rules of FR-54 and FR-54A are reproduced as under:-

“F.R 54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal or review or would have been so re-instated but for his retirement on superannuation, while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order:-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension proceeding his

dismissal, removal or compulsory retirement, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representations within 60 days from the date on which the communication in this regard is served on him and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount not being the whole of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension proceeding dismissal, removal or compulsory retirement, as the case may be shall be treated as a period spent on duty for all purposes.

F.R. 54-A.- *(1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant*

is re-instated without holding any further enquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowance in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of the clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall subject to the provision of sub-rule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal, or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed 60 days from the date on which the notice has been served) as may be specified in the notice:

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be and the date of judgment of the court shall be regularized in accordance with the provisions contained in sub-rule (5) of Rule 54.

(3) If the dismissal, removal, or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period to which he would have been entitled, had he not been dismissed, removed or compulsorily retired, as the case may be.”

20. It appears, from a reading of FR-54, that the said Rule basically deals with dismissal/removal/compulsory retirement of a Government servant consequent to disciplinary proceedings and if anything, this becomes apparent from the reference, in sub-Rule (ii) of the said FR-54, to “full exoneration” of the Government servant, the concept of “exoneration” necessarily predicating a prior allegation of misconduct. That apart, the applicability of FR-54, in the present case, is also ruled out for the reason that the reinstatement of the petitioner in service was not “as a result of the appeal or review” that as is required by FR-54 (1), but by virtue of the judgment, dated 25.07.2011, passed by this Court in W.P.(C) No.3227/1997 i.e. by a Court of Law, which would attract FR 54A(1).

21. Cases where Government servants, who had been dismissed/removed or compulsory retired, are reinstated consequent to the setting aside of such dismissal/removal or compulsory retirement by a

Court of law are expressly covered by FR-54A. FR-54A(1) stipulates that, where the such dismissal/removal/compulsory retirement is set aside by the Court, and the Government servant is consequently reinstated without further enquiry, the period during which he remained absent is required to be regularized, and pay and allowances paid to the Government servant in accordance with sub-Rule (2) or (3) of the said FR-54A. Sub-Rule (2) deals with a situation where the dismissal/removal/compulsory retirement of the Government servant is set aside by the Court solely on the ground of non-compliance with Article 311 (2) of the Constitution, and where he is not exonerated on merits. Inasmuch as the termination of the petitioner's service was not set aside, by this Court, in its judgment dated 25.07.2011, for non-compliance of Article 311 (2) of the Constitution, sub-Rule (2) (ii) of FR-54A would obviously not apply to the present case.

22. The provision which does apply to the facts in the present case, would be sub-Rule 3 which of FR-54A, refers to a situation in which the dismissal/ removal or compulsory retirement of the Govt. servant is set aside by the Court on merits. In such a situation, the said sub-Rule mandates that the period between the date of dismissal/removal/compulsory retirement, and the date of reinstatement, "shall be treated as duty for all purposes". A perusal of the judgment, dated 25.07.2011, rendered by this Court in W.P. (C) No.3237/1997 reveals that the termination of the petitioner, from service, was actually set aside on merits. To reiterate, the petitioner had been terminated from

service only for the reason that it had not been possible to verify the character and antecedents of the petitioner at the address provided by him. The findings of this Court, on the said aspect, as contained in para 9 to 14 of its judgment dated 25.07.2011 (supra) read thus:

“9. This is the fulcrum of the defence taken i.e. that due to incomplete residential address provided by the petitioner, character verification pertaining to his antecedents could not be got done and since the rules require that before confirmation the antecedents of the petitioner had to be W.P.(C) No.3237/1997 Page 5 of 7 verified; verification being hampered on account of the fault of the petitioner, the respondent was justified in taking the action.

10. We are quite surprised at the action taken by the respondent for the reason if the respondent could not obtain a character verification report qua the antecedents of the petitioner inasmuch as the local police informed them that the address provided was inadequate or deficient, least which was expected was that the department should have written to the petitioner seeking better particulars about the address provided by the petitioner where he was staying as claimed by him with his uncle.

11. Instant case highlights the pitfalls of unauthorized colonization in Delhi.

12. Rithala is a village in Delhi and the Government has not permitted any colonization on the agricultural lands of said village. Land sharks had illegally carved out residential plots on agricultural lands which have been purchased by innocent persons. They have made

their houses on said illegal carved out plots of land. There is nothing official about these colonies and the result is people giving private numbers to their houses. But this is the reality for half the population of Delhi which lives in these unauthorized slums.

13. If the Government cannot provide housing to all and those without a shelter manage a shelter over their heads, it is the duty of the Government to at-least ensure that when, in furtherance of the requirement of a service rules, character/antecedent verification has to be carried out its officers are able to locate the slum and the houses therein. W.P.(C) No.3237/1997 Page 6 of 7

14. If the officers fail, it would be their obligation to contact the person concerned and seek his help in locating the abode of the person. This would be the duty of care which law enjoins upon these officers.”

23. It is clear, therefore, that the decision to terminate the petitioner's service had been set aside, by this Court, on merits, finding it to be totally unjustified. That being so, in view of the clear mandate of FR-54A(3), it is obvious that the decision, of Respondent No.2, to treat the period of absence from service, of the petitioner, as 'non duty', infracts FR-54A (3) and cannot, consequently, be sustained.

24. We are fortified in our view by the decision of a Division Bench of this Court, speaking through A.K. Sikri, J. (as his Lordship then was) in ***UOI Vs. Ex SI Jeevan Lal, dated 25.05.2009 in W.P(C) 14349/2009.*** Though the said case related to termination of the respondent therein, consequent to disciplinary proceedings, the said respondents were

reinstated by an order passed by the Central Administrative Tribunal, on the ground that the case against them was one of no evidence. The respondents, were however, aggrieved by the further direction, of the Tribunal, that they would not be entitled to back wages for the period between the termination and reinstatement, applying the principle “no work no pay”. This Court set aside the said decision, holding, the doctrine of “no work no pay” to be inapplicable in view of the clear mandate of FR-54A (3). Para 7 of the said decision reads as under:-

“In the present case, the removal of the respondents has, admittedly, been set aside by the Central Administrative Tribunal (CAT) on the ground that it was a case of no evidence and they have been reinstated without holding any further inquiry. The setting aside of removal of the respondents being no merit, the intervening period between the date of removal and the date of reinstatement has to be treated as on duty for all purpose and they have to be paid full salary and allowances for the said period, as would have been paid to them, had they not been removed from their services. The judgments relied upon by Id. Counsel for the petitioners have no applicability in the face of statutory rule applicable to the respondents.”

25. Moreover, Respondent No.2 having re-instated the petitioner, as directed by the Court in its judgment dated 25.07.2011 (supra), and also granted him 50% back wages, there is no justification, whatsoever for treating the period of absence from service of the petitioner, as “non duty”.

26. We are conscious of the fact that our above decision is founded on FR-54A, though, the direction, in the judgment dated 25.07.2011 (supra)

of this Court in W.P.(C) No.3237/1997 has referred to FR-54. We are doing so because FR-54 and FR-54A are sister provisions; the former dealing with exoneration of the employee in appeal or revision arising out of disciplinary proceedings, and his consequent reinstatement, and the latter dealing with the reinstatement of the employee consequent to setting aside of his dismissal/removal/compulsory retirement by a Court of law. In either case, the entitlement of the employee, to have the period of his absence from his service treated as “on duty” is a statutory consequence of his being reinstated on merits. In any event, the prayer in the petitioner’s writ petition does not refer to any specific sub-Rule, but is that the period during which the petitioner remained terminated from service be directed to be treated as qualifying period for computation of his service benefits. That being so, we do not feel that it would be fair to deny the petitioner his just entitlement under FR-54A, merely because the judgment dated 25.07.2011 (supra) referred to FR-54.

27. We may also notice, in this context, that the judgment dated 25.07.2011 (supra) in W.P.(C) 3237/1997 was never challenged; rather it was accepted and purportedly implemented - albeit, as we have held, incorrectly - by Respondent No.2

28. We are also constrained to observe that we have no explanation forthcoming, either for treating the period of absence from service of the petitioner, as “non duty”, either in the said decision as taken by

Respondent No.2 or even in the counter affidavit filed in response to the present writ petition.

29. Resultantly, the decision of Respondent No.2 to treat the period during the period from 02.02.1991 to 17.03.2012, during which the petitioner remained absent from service, as “non duty” is quashed and set aside. Respondent No.2 is directed to treat the said period as “on duty” for all purposes. The said direction, however, would not extend to payment of full back wages to the petitioner, in view of the statement, made by his counsel who appeared before this Court on 01.05.2015, that the petitioner was satisfied with payment of 50% salary for the said period of his absence. In terms of the statement and concession recorded, vide order dated 01.05.2015, we direct fixation of salary by grant of notional increments from date of initial joining from 21.03.1998 till reinstatement on 17.03.2012. The period between 02.02.1991 to 17.03.2012 would also be counted for pension.

30. The writ petition filed by the petitioner is allowed to the extent indicated above, without any order as to costs.

C. HARI SHANKAR, J.

SANJIV KHANNA, J.

MAY 26th, 2017
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