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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C)8192/2016**

Date of decision: 14th September, 2017

PRAVEEN KUMAR OF CISF Petitioner
Through: Mr. Anubhav Mehrotra,
Adv.

versus

UNION OF INDIA & ANR Respondents
Through: Mr. Amrit Pal Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

Head Constable Praveen Kumar had served in the Indian Army from 1983 till 2007. He had applied as ex-serviceman and was appointed as Head Constable (GD) in the Central Industrial Security Force (CISF) on 2nd October, 2009.

2. At the time of recruitment on 3rd September, 2009, the petitioner was required to fill up the Attestation Form, paragraph 12 of which required him to state as under:

- a) Whether he had been arrested;
- b) Whether he had been prosecuted;

- c) Whether he had been kept in detention;
- d) Whether he had been bound down;
- e) Whether he had been fined by the Court of law;
- f) Whether he had been convicted by a Court of law for any offence;

Another column had required the petitioner to state whether there was any pending case against him in any Court of law at the time of filling up the Attestation Form. (We have taken the said details from the original Attestation Form produced before us by the respondents, a photocopy of which has been kept on record).

3. Against each of the columns, the petitioner had marked the option 'no', and struck off the word 'yes'.

4. We have recorded the details to highlight the said form did not require the petitioner to state and give the number and particulars of FIR, if any, registered even if he was not arrested or prosecuted.

5. The respondents, thereafter, had received C&A attestation report from District Magistrate, Kangra vide letter dated 29th March, 2010. This report had referred to FIR No.46/1992 dated 28th May,

1992 under Sections 147/149/452/380/382 of the Indian Penal Code registered at P.S. Dehra. This case, it was stated, was withdrawn from the Court of Sub-Divisional Judicial Magistrate (SDJM), Dehra on 13th December, 1993.

6. On the basis of the verification report, the petitioner was issued charge sheet under Rule 36 of CISF Rules, 2001. The Group Commandant vide order dated 31st May, 2011 imposed penalty of reduction of pay by one stage from Rs.7,810/- + Rs.2400/- to Rs.7510/- + Rs.2400/- for a period of two years. The petitioner was not to earn increments of pay during the period of reduction. Further, the period of reduction would have the effect postponing future increments of pay.

7. The punishment awarded to the petitioner was reviewed by the DIG (North Zonal) Headquarters, New Delhi, who vide show cause notice dated 23rd August, 2011 had proposed enhancement of penalty to that of removal. The petitioner had objected and protested vide his reply dated 20th September, 2011. By order dated 31st October, 2011, the penalty imposed was substituted by that of removal from service.

8. The petitioner preferred an appeal to the Inspector General, CISF, being the statutory appellate authority. The appeal was rejected vide order dated 1st May, 2012.

9. The petitioner thereupon had filed a writ petition before the High Court of Himachal Pradesh which was disposed of vide order dated 27th December, 2013, granting liberty to the petitioner to file a review petition against the order dated 29th May, 2012 passed by the appellate authority.

10. The petitioner filed review petition before the Directorate General, CISF who vide order dated 21st August, 2014 allowed the same, observing and holding:-

“7) And whereas, I have carefully gone through the revision petition, records and evidences held on case files. I find that the disciplinary proceedings have been conducted as per laid down procedure. The pleas put forth by the petitioner in his revision petition were raised earlier as well before the Disciplinary and Appellate Authorities. However, no relief was given by those authorities. However, I find that there are certain mitigating circumstances while deciding about the quantum of punishment, especially the fact that petitioner was appointed in CISF after rendering 24 years service in the Indian Army, State Govt. had withdrawn the criminal case against the petitioner and other villagers in the year 1993 and the petitioner was appointed in CISF after 16 years subsequent to withdrawal of the case.

8) *And whereas, having regard to the totality of the facts and circumstances of the case, I take a compassionate view and hereby set aside the orders passed by the new Disciplinary and Appellate Authorities and uphold the penalty awarded to him by the erstwhile Disciplinary Authority i.e. Group Commandant, CISF, Gp, HQrs, Chandigarh, vide order dated 31st May, 2011.*

9) *NOW THEREFORE, I hereby reinstate the petitioner in service with the above punishment and direct him to report for duty at North Zone-I HQrs. Saket, New Delhi within 15 days from the date of receipt of this order. If he fails to report for duty within the stipulated period, it will be presumed that he is no more interested to serve in CISF and order of re-instatement will be treated as withdrawn. On reinstatement, the penalty as ordered above shall be given effect to.*

10) *The intervening period from the date of Removal from service to the date of joining on re-instatement will be regularized separately. The petitioner would be given an opportunity to submit his representation against the proposal within one month of joining the duty on re-instatement and decision in this regard will be taken after consideration of the representation, if any, submitted by the petitioner or after expiry of period of one month, as the case may be.”*

11. Thus, the petitioner was reinstated and asked to report for duty within 15 days. The order of removal etc. was set aside and the order of penalty dated 31st May, 2011 upheld. The Revisionary Authority had noticed that the petitioner had joined CISF after 24 years of service in the Indian Army. The police had withdrawn the case against the petitioner and others in the year 1993. The petitioner had joined CISF after 16 years of withdrawal of the said

case. The Director General in paragraph 10 had recorded that the intervening period between the date of removal of service to the date of reinstatement could be regularized after giving an opportunity to the petitioner to submit his representation within one month of joining.

12. The petitioner rejoined and thereafter made a representation seeking back wages etc.

13. By the impugned order dated 26th July, 2016, the period between 9th November, 2011 to 10th September, 2014 of 1098 days has been directed to be treated as Dies-Non for all purposes. However, this period would not imply break in his past service in terms of Rules 55 of CISF Rules 2001 read with FR-17. The relevant portion of the order dated 26th July, 2016 reads as under;-

“2) Accordingly, this office issued a show cause notice No.(2144) dated 07.6.2015 proposing that the absence period of the individual (i.e.) from 09.11.2011 to 10.09.2014 for 1098 days will be treated as ‘DIES NON’ for all purpose by giving an opportunity to the individual to make representation, if any, against the said proposal within 07 days from the date of receipt of the notice.

3) The said notice was sent to HC/GD Praveen Kumar by this Office letter No.(2218) dated 10.07.2015 through the DIG, CISF Unit, DMRC Delhi. Now as per intimation received from the DIG CISF Unit, DMRC Delhi vide letter No.(1438) dated 17.07.2015 the appellant has received the show cause notice on

15.07.2015 and submitted written representation dated 29.07.2015 against the aforesaid proposal which was not in prescribed time limit specified thereon and the same was considered/examined and found not satisfactory.

4) I, therefore, order that the period of absence from duty from 09.11.2011 to 10.09.2014 as "DIES NON" for all purpose proposed vide show cause notice No.(2144) dated 07.6.2015 is hereby confirmed. However, it is clarified, that this will not imply break in his past service in terms of Rules 55 of CISF Rules 2001 read with FR-17."

14. Rule 55 of CISF Rules, 2001 requires that an enrolled member of the force should be given an opportunity by way of show cause notice, before deciding the question whether intervening period between the date of dismissal, removal or compulsory retirement and the date of reinstatement should be treated as Dies-Non for the purpose of service. It also stipulates that the authority would pass a reasoned order if intervening period were to be treated as Dies-Non.

15. The order dated 26th July, 2016 does not meet the statutory mandate of Rule 55 of the CISF Rules 2001 read with FR-17, as it does not record and state reasons why the period was being treated as Dies-non. This examination was certainly required and necessary, in view of the facts of the present case which were noticed and given due credence by the Directorate General in his

order of reinstatement dated 21st August, 2014. In the present case, the petitioner had accepted the punishment of reduction of pay etc., though the charge against him was rather weak given the nature of details required to be furnished in the attestation form. Further, the FIR in question was registered in the year 1992 and was withdrawn by the State in 1993. The contention of the petitioner was that he was never arrested or detained in the said FIR and had no information regarding its pendency. This was the reason why the petitioner had not mentioned and given the said details in the attestation form.

16. In the facts of the present case, we are of the opinion that the order of removal was completely unjustified, arbitrary and contrary to law. The petitioner should not have been removed from service, as is clear from the order of the Revisionary Authority i.e. Directorate General dated 21st August, 2014. Accordingly, we allow the present petition with the direction that the intervening period of 1098 days between 9th November, 2011 and 10th September, 2014 should not be treated as Dies-Non. We are not inclined to pass an order remitting the matter in the facts of the

present case. The matter has remained in issue in different forums for a long time. The petitioner, who is an ex-serviceman, has undergone enough suffering and harassment since he joined CISF in 2009. The affliction and torment must come to an end.

17. Accordingly, the writ petition is allowed, and the impugned order dated 26th July, 2016, directing that the period between 9th November, 2011 and 10th September, 2014 would be treated as Dies-Non is quashed and set aside. The petitioner would be treated as if he was in service. The arrears of pay would be paid within four months from the date copy of this order is received by the respondents. In case payment is made after the said period, the respondents would pay interest @8% per annum from the date this order is received. There would be no order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

SEPTEMBER 14, 2017
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