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

+ **W.P.(C) 417/2018**

DHARAMBIR SINGH

..... Petitioner

Through: Ms. Ankita Patnaik, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Vivekanand Mishra, Advocate
with Mr. Vipul Agrawal, Advocate
for UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **27.11.2018**

1. This is a petition by a person whose termination from the Border Security Force (BSF) was set aside by this Court by judgment dated 26th August, 2015 in Writ Petition (Civil) No. 3585/2003.

2. The Petitioner joined the BSF as a Constable on 6th August, 1990. He was proceeded against for unauthorised absence. He was tried by a Summary Security Force Court ('SSFC') for offences under Section 20 (b) and (c) and Section 21 of the BSF Act 1968. Subsequently, he was dismissed from service.

3. By the aforementioned judgment dated 26th August 2015, this Court set

aside the order of dismissal of the Petitioner. However, the Court was of the view that the case did not warrant award of full arrears of salary. While directing the Respondents to reinstate the Petitioner, this Court granted him 50% arrears of salary and allowances, with all consequential benefits including notional increments, including fitment in the new scales after sixth pay commission recommendation and seniority. The Respondents were directed to issue the consequential orders and ensured that payments were released within 12 weeks from that date.

4. There are two issues raised by the Petitioner in the present Writ Petition. One concerns the non-payment of Children Education Allowance ('CEA'). The Petitioner has two children, the elder being a son and the younger being a daughter. After dismissal from service on 19th August, 1999, the Petitioner had borne the expenditure of his children's education. Post reinstatement, the Petitioner submitted a request for grant of arrears of the CEA in accordance with the directions given by the Court i.e. for the period from 2003 to 2012 as far as his son is concerned and for the period from 2003 to 2015 as far as his daughter is concerned.

5. In response to his representation dated 11th April, 2017 the Commandant 52nd Battalion, BSF, Raisinghnagar, the Respondents informed him by letter dated 6th May, 2017 that he should submit a list of items that he had purchased and also produce the bills with effect from 2003 to 2012 for his son and from 2003 to 2015 for his daughter.

6. The Petitioner's case is that he has already produced the mark sheets of

two schools where his son and daughter were studying on a continuous basis. Requiring him now to get the bills of over 10 years was impractical and impossible of compliance. The further representation by the Petitioner dated 7th June, 2017 in this regard was not responded to.

7. The other issue that the Petitioner raises is that his son fell down from a tree on 26th June, 2013 and suffered grave injuries. Since the Petitioner was out of service at that point of time, he could not have availed the facilities of a BSF hospital. There was no government medical facility for treating the said injuries of his son available at that point in time. Therefore, the Petitioner rushed his son to a private hospital in Panipat. It is stated that his son has undergone at least 5 operations since his injury and his treatment is still going on. The Petitioner has stated that he has already spent more than 14-15 lacs on the treatment of his son. He has enclosed all the prescriptions and medical documents showing that the Petitioner's son underwent surgeries and is currently undergoing treatment.

8. Even on this aspect, after being reinstated, the Petitioner made a representation pointing out that this was a genuine request that had been duly recommended even by the Deputy Commandant. However, on 2nd November, 2016, he received a reply from the Commandant informing him that the bills of reimbursement had to be submitted within six months of being reinstated. This was done without appreciating that he was reinstated after a period of almost 16 years. It is further stated by the Respondent that a certificate of non-availability of the appropriate medical facility was not enclosed with the claim.

9. Taking up first the issue of the CEA, the Court finds that the stand of the Respondent based on certain policy document circulars is not a reasonable one. When admittedly the Petitioner was out of service from 1999-2015, the question of his maintaining bills of all the purchases made for his children appears to be unreasonable and impractical. When admittedly the two children of the Petitioner were studying in school and their mark sheets were enclosed, it is obvious their educational expenses must have been borne and that the Petitioner and was entitled to the CEA.

10. The Court is informed that till 2008, a fixed amount of Rs. 1200/- per child per session as CEA was being allowed for all members of the BSF. Thereafter, it was on the actual basis of the expenditure incurred.

11. On account of the long passage of 15 years for which the Petitioner was out of service, it seems impractical to expect him to produce in 2016 bills for the period from 2008 onwards.

12. In the circumstances of the case, the Court considers it appropriate to direct the Respondents to pay the Petitioner the arrears of the CEA on the basis of Rs. 1200/- per child per session from the date of his removal from service till 2012 as far as his son is concerned and 2015 as far as his daughter is concerned respectively on the same basis i.e. Rs. 1200/- per child per session with respect to the arrears of Child Education Allowance.

13. As far as the medical reimbursement is concerned, here again although

the learned counsel for the Respondents has referred to a policy document which requires the claim to be made within six months of reinstatement into service, it is obvious that as long as the Petitioner was not in service he could not make such a claim. It is then pointed out that he did not submit the claim within six months after reinstatement. Here, the Court finds that the Deputy Commandant has recommended the case of the Petitioner for grant of medical reimbursement, thus impliedly accepted the explanation for the delay. Therefore, it is not open to the Respondents to now raise the plea of delay in submitting the claim.

14. The fact that the Petitioner's son underwent surgery in a private medical facility is not in dispute. Additionally, the Petitioner placed on record the certificate of the Community and Centre, Samalka, Panipat that the facility of neuro surgery is not available there. This is relevant because it is in that area that the Petitioner's son fell and received serious head injuries which required intervention by a neuro surgeon and that facility was not available in the Government Medical Centre. The Petitioner therefore could not be faulted for taking his son to a private medical facility.

15. In these circumstances, the Court is of the view that the denial by the Respondents of the reimbursement of the Petitioner's medical claim for his son's medical treatment is not justified.

16. The Court directs the Respondents to now process the claims submitted by the Petitioner for medical reimbursement and CEA and grant them in accordance with the Rules without raising the plea of either limitation or that

the Petitioner did not take his son to a Government hospital first and pass necessary orders on both issues within a period of eight weeks and in any event not later than 30th January 2019.

17. Arrears both in respect of the CEA in terms of this judgment as well as the medical reimbursement should be paid to the Petitioner not later than 12 weeks failing which the Respondents will have to pay the Petitioner in addition thereto simple interest at the rate of 9% per annum for a period beginning with the expiry of twelve weeks from the date of actual payment.

18. Order be given *dasti* to the parties.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 27, 2018

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