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

+ W.P.(C) 6766/2017 & CM APPL. 28194/2017

VEER PRATAP SINGH

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sarat Chandra, Advocate for R-1
to R-3.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **12.12.2018**

SANJEEV NARULA, J.:

1. By way of the present petition under Article 226 of the Constitution of India, Petitioner assails the order dated 29th May 2017, passed by the Respondents, cancelling his candidature for appointment to the post of Head Constable (GD). He also seeks consequential orders in the nature of directions to the Respondents for detailing him for training for the aforesaid post.

2. The Petitioner was appointed as Head Constable (GD) with CRPF on 8th September 2011. After completion of the training, he was posted to fourth battalion in Odisha and remained there till 3rd December 2016. On 6th July 2016, Respondents issued a signal inviting applications for the post of Head Constable (GD) through Limited Department Competitive Examination

(LDCE). The Petitioner applied for the said post and qualified the written examination, Physical Efficiency Test (PET) and was declared medically fit.

3. On 27th May 2017, Commandant of 235th Battalion, issued a signal circulating the list of candidates who were selected for the post of Head Constable (GD) through LDCE-2016. The name of the Petitioner figured at serial No. 4 of the said list. He waited for the letter of appointment and when the same was not received, he made a representation to the Respondents. He was then informed that his candidature was treated as cancelled on the ground that he had availed one day excess joining time (J/T) on 14th January 2017. The cancellation order reads as under:

“Uncl (.) Selection of HC/GD through LDCE-2016 (.) Refer to your office signal NO. R.II-1/2017-235-EC-I dated 24/05/2017 vide which clarification has been sought in connection with those personnel who have been awarded punishment after final selection of HC/GD through LDCE- 2016 or before issuing offer of appointment (.) In this connection, it is intimated that as per instruction contained in para-3 of standing order 05/2011, candidates should have unblemished records till the issue of offer of appointment for the post of HC/GD through LDCE are only eligible (.) As such due to not having unblemished record being regularization of 01 day excess availed JT on 14/01/2017 regularized as LHP WNLS, No. 115183811 CT/GD Veer Pratap Singh of your Unit is not eligible for the post of HC/GD through LDCE-2016 (.) Request take action accordingly (.) For DIG (Rectt) Dte only(.) Kindly convey your consent on our contention as explained above///-.”

4. Aggrieved with the aforesaid cancellation, the Petitioner has filed the

present petition.

5. The Court has heard Mr. Ankur Chhibber learned counsel appearing on behalf of the Petitioner and Mr. Sarat Chandra learned counsel for the Respondents. The controversy in the present case is centred around the question as to whether Respondents are justified in cancelling the candidature of the Petitioner on the ground that he does not have '**unblemished record**'. The cancellation order declares him to be ineligible for the post of Head Constable (GD). It refers to a standing order 05/2011, which lays down the eligibility conditions. The relevant clause of the standing order reads as under:

“ELIGIBILITY CONDITIONS.

Constables (General duty / Bugler / Mali / Painter) only in the Force having following qualifications / qualitative requirements (QRs) will be eligible to appear in the examination.

- a) Service eligibility: They should have completed four years of service including basic training on the last date of application.
- b) Upper age: The upper age limit for appearing in the LDCE will be 32 Years as on 1st August.
- c) Educational Qualification: 10 + 2 pass from a Board or university recognized by the Central or State Govt.
- d) Clean record: They should have minimum Good ACRs of last four years and should have unblemished service records till the issue of offer of appointment for the post of HC ((50) through LDCE.**
- e) Physical Standards: As applicable to Constables (GD).
- f) Medical Category: SHAPE-I.”

6. Learned counsel for the Respondents has urged that in terms of the

standing order, a Constable who does not have unblemished service record is ineligible for the appointment. In order to explain the '**blemish**', the counsel for the respondents referred to FR 108, which reads as under:

“F.R.108. A Government servant who does not join his post within his joining time is entitled to no pay or leave salary after the end of the joining time. Wilful absence from duty after the expiry of joining time may be treated as misbehaviour for the purpose of Rule 15.”

7. Relying on the aforesaid Fundamental Rule (FR), the counsel for the Respondents urged that the Petitioner has Non Qualifying Service (NQS) due to regularization of one day excess joining time (J/T) availed on 14th January 2017, as Leave Half Pay (LHP). He explained that Petitioner was earlier attached to the 4th Bn CRPF, Rayagada, Odisha. On 15th November 2016 Petitioner was posted from 4th Bn to 235th Bn. A movement order was issued on 3rd January 2017, whereby Petitioner was to proceed to join 235th Battalion. The movement order specified that the permissible joining time would be as per Rules that stipulate that, a person is entitled to ten days of joining time, where the distance of old and new headquarters is less than 1000 Kms. The petitioner was relieved from 4th Battalion on 3rd January 2017 and he reported his arrival at 235th Battalion CRPF at Group Centre, Greater Noida on 15th January 2017. Since the distance in the case of Petitioner was less than 500 Km, he had to report at Greater Noida within 10 days i.e. by 14.01.2017. This excess joining time was later regularized by the Respondents as Half Pay Leave (LHP) with no leave salary vide order dated 20th March 2017.

8. The learned counsel for the Petitioner has urged that though Petitioner was required to report to 235th Battalion on 14th January 2017, but due to unavoidable circumstances, he could report only on 15th January 2017. According to him, the bus that Petitioner had boarded from Farukabad to Dadri was delayed due to dense fog. On his arrival, he had informed the Authorities of the reason for the delay and was allowed to join without any reservation. He was never informed about the one day excess joining time having been regularized as LHP.

9. Concededly, Petitioner has qualified the LDCE and fulfils all the requirements and would have been appointed to the post of Head Constable (GD) but for the presence of NQS in his service record. It is not in dispute that the Respondents did not inform the Petitioner about the regularization of one day excess joining time by treating it as LHP. If the Petitioner had been intimated about the aforesaid decision at the relevant time, he would have taken appropriate action against the same. The Respondents counsel has urged that deduction of Petitioner's salary is a sufficient notice of Petitioner's leave regularization. We do not agree with this contention. The Respondents ought to have intimated its decision to the Petitioner in order to enable him to exercise his right to challenge the same, more so, since this leave regularization amounts to imposition of a penalty in the nature of an adverse entry (NQS) in the service record of the Petitioner.

10. There is yet another fact that is necessary to be looked into. The order whereby the excess joining time of the Petitioner was regularized is dated 20th March 2017, i.e. prior to the order declaring him to be a successful

candidate. This order makes no mention of any disqualification of Petitioner's candidature.

11. The fundamental question that arises in the present petition is as to whether the regularization of Petitioner's absence as half pay leave without salary would render Petitioner ineligible for the post as per the standing order 05/2011 referred above. The regularization of Petitioner's one day excess joining time has been done by the Respondents suo moto. The order regularizing the period of absence in our view, removes the irregularity that existed, if any. The one day excess joining time has not been treated as a period of absence or as interruption or break in service of the Petitioner.

12. Similar question has been considered by the Co-ordinate Bench of this Court in *Dhiraj Bhatt v. Union of India and Ors.* reported in *ILR (2014) II Delhi 921* where, after examining the CCS (Leave Rules), the Court held as under:

“13. So far as the competency of the respondents to alter the leave of the petitioner from casual leave to earned leave is concerned, Rule 7 of Chapter II - General Conditions of the CCS (Leave Rules) is relevant and reads as follows:-

"7. Right to leave

(1) Leave cannot be claimed as of right.

(2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and

applied for except at the written request of the Government servant." (Emphasis by us)

14. It is evident from the above that the respondents have no authority to cancel the leave which was sanctioned to the petitioner or to covert the same into earned leave.

15. So far as the petitioner's inability to report on 15th April, 2010 is concerned, we find that the same was bonafide and for the reasons completely beyond his control. The petitioner had left his home town and was enroute to his place of posting when the circumstances midway intervened and he was unable to find any transportation to reach his destination.

16. In the instant case, the respondents have regularized the petitioner's absence as half pay leave without salary and allowances. The respondents have not directed that the same would be treated as an interruption or break in service of the petitioner. There is also no decision that such absence rendered the petitioner ineligible for appearing in LDCE for which the minimum period of continuous service is required. The respondents having passed an order regularizing the period of absence, in the given circumstances, such absence could not have come in the way of the petitioner's entitlement to appear in the LDCE and for appointment if found successful.

17. Our attention has also been drawn to the comments in Swami Handbook 2010 made in Chapter V captioned as "Unauthorized absence - Break in service". The relevant portion whereof reads as follows:-

"1. Wilful absence from duty not covered by grant of leave will be treated as dies non for all purpose, viz., increment, leave and pension. Such absence without leave standing singly and not in continuation of any authorized leave of absence will constitute an interruption in service entailing forfeiture of past service for the purpose of pension and requires

coordination by the Appointing Authority for counting past service for pension Condonation on such break for pension should be considered suo motu and cannot be refused as a matter of course, except in exceptional and grave circumstances.

2. Unauthorized absence after leave, will be debited against his half pay leave account excess, if any, being treated as extraordinary leave. However, he will not be entitled to any leave salary.

3. All cases of unauthorized absence from duty or in continuation of leave, will render a Government servant liable for disciplinary action, treating it as misconduct."

18. Mr. B.V. Niren, learned counsel for the respondents placed reliance on the Rule 25 of CCS (Leave Rules). We find that reliance on Rule 25 is of no assistance to the respondents. Even this rule permits the authority to grant leave or extend the leave to a government servant who remains absent or to direct that after the end of leave, the period of his absence shall be debited against his leave account as though it were half pay leave to the extent such leave is due. Sub-Rule 2 of Rule 25 specifically states that wilful absence from duty after the expiry of leave renders a government servant liable to disciplinary action. From the above narration of facts it is apparent that the respondents also did not consider the petitioner's absence as wilful and have not subjected him to any disciplinary action.

19. It is an admitted position that the respondents have treated the absence of the petitioner as bonafide when they have adjusted it against the leave admissible to the petitioner. It is accepted that it was not willful absence which would have invited the consequences set out in the rules. The same has not been treated as misconduct and therefore, no disciplinary action has been taken against the petitioner. No order has also been passed by the competent authority that this period is to be treated as break in

service. The same cannot be so treated.”

13. Somewhat similar view have been taken in another decision dated 19th August 2017, passed by this Court in **W.P. (C) 1359/2013** titled as ***Mehbob Khan v. Union of India***. The relevant portion of the above decision reads as under:

“11. This court is of the view that putting a government servant at a disadvantage by an adverse entry in his service book without intimation to him would be against the principles of natural justice. It need not be re-emphasized that no punishment or adverse entry can be meted out to any person without first giving the person an opportunity to be heard. ”

14. In view of the above discussion, thus we are of the opinion that the Respondent's action of cancelling Petitioner's candidature cannot be sustained. This necessitates interference by this Court and we have no hesitation in doing so. Accordingly, we quash the order dated 29th May 2017 and further direct the Respondents to issue the letter of appointment for the post of Head Constable (GD) to the Petitioner. The Respondents would now proceed to detail the Petitioner for training along with the next batch. This Court vide order dated 8th August 2017, had directed that in case the Petitioner would succeed, appropriate orders regarding the seniority shall be passed. We accordingly direct that Petitioner's seniority would be reckoned along with his batch mates who were appointed vide order dated 27th May 2017. There shall however be no order with respect to back wages, on the principle that the Petitioner has not shouldered responsibilities of the higher post.

15. The writ petition is allowed in the above terms.

CM APPL. 28194/2017(for directions)

As the writ petition has been allowed, no further directions are required to be given and accordingly the application is disposed of.

SANJEEV NARULA, J

S.MURALIDHAR, J

DECEMBER 12, 2018

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