

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 32 of 2009

- Brij Bhooshan Tiwari S/o Shri Ram Bachan Tiwari, Aged about 44 years, Constable No.685, XIth Battalion, C.A.F., H.Qr. Putpura, Champa, District Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. The State of Chhattisgarh through Secretary, Home (Police) Department, D.K.S. Bhawan Raipur. (C.G.).
2. Director General of Police, Police Headquarters, Civil Lines, Raipur (C.G.).
3. Dy. Inspector General of Police C.A.F., Sakri, Bilaspur (C.G.).
4. Commandant, Xith Battalion, C.A.F., H.Qr. Putpura, Champa, District Janjgir-Champa (C.G.).

---- Respondents

For Petitioner	:-	Mr. Vinod Deshmukh, Advocate.
For Respondent-State	:-	Ms. Fouzia Mirza, Addl. A.G.

Hon'ble Shri Justice Prashant Kumar MishraOrder On Board19/12/2019

1. Heard.
2. Petitioner was a Head Constable at the relevant time. He

was involved in a brawl with his Platoon Commander, Ram Dhyan Singh, at about 9:00 am on 13.11.1994. Petitioner assaulted his superior officer in which the officer sustained injuries and was medically examined. He was also found to have entered in similar brawl with another Head Constable, Hanuman Prasad, on 28.04.1991, at that time the petitioner was punished but yet his conduct did not improve.

3. In the present Departmental Enquiry (for short 'D.E.') the charge-sheet was issued in the year, 1994, and on completion of enquiry he was terminated vide order dated 10.04.1995. After rejection of his appeal on 28.08.1995 petitioner preferred Original Application No.1132 of 2000, before the erstwhile MP State Administrative Tribunal, which was subsequently transferred to the High Court of Madhya Pradesh, wherein it was registered as WP No.14688 of 2003. The writ petition was allowed vide order dated 01.08.2005 leaving open the question of grant of back wages to be subjected to the decision of the D.E., which was to be conducted afresh against the petitioner.
4. In the fresh D.E., the petitioner was again visited with penalty of dismissal from service vide order dated 24.10.2007, however, the Appellate Authority partly allowed the petitioner's appeal vide its order dated 28.01.2008 but did not pass any order in respect of back wages. By

separate order Annexure P-1 dated 16.05.2008, Deputy Inspector General, C.A.F., Northern Region, Bilaspur, directed that for the period during which the petitioner remained out of services he shall not be entitled to any back wages on the basis principle of 'No Work No Pay'. However, his past services shall be calculated for the benefit of pension.

5. Shri Vinod Deshmukh, learned counsel for the petitioner, would submit that, even if, this Court would be slow in interfering with the quantum of punishment, the fact remains that despite there being no order denying the petitioner his seniority for the period during which he remained out of service, the said period is not counted in his seniority and the petitioner is placed down below in the gradation list on the ground that during the period for which the petitioner was out of service, he is not entitled to the seniority for such period.
6. Ms. Fouzia Mirza, learned Additional Advocate General, would submit that such benefit, which are not expressly directed in the impugned order, is obviously denied to the petitioner, therefore, he cannot claim seniority for the period during which he was out of service.
7. Having heard learned counsel for the parties it appears the

present is a case where the first enquiry was quashed being irregular and after the second enquiry the Appellate Authority reduced the penalty of dismissal to one of reinstatement without passing any order as to back wages. By separate order Annexure P-1 the petitioner was, specifically held, not entitled to back wages albeit, the past services were directed to be calculated for the purposes of pension. In fact, there is no order as to whether or not, the petitioner's services during the period he stood terminated shall be calculated to be in service or not. Ordinarily when the said period is calculated for the purposes of pension the employee has to be treated to be in service otherwise it cannot be included for calculating the qualifying service for pension. If that be so, the said period during which the petitioner remained out of service cannot be excluded for granting seniority on the post. The issue as to whether the penalty imposed on the petitioner and the D.E. against him would affect his chances for promotion has not fallen for consideration, but for that he cannot be denied seniority on the post during which he has been treated to be in service.

8. As a consequence of the above discussion, the writ petition is allowed in part. While maintaining the order passed by the Appellate Authority, it is directed that the period during which the petitioner remained out of service due to the earlier and

subsequent termination shall be counted in service giving him seniority for the said period. Needless to say if on account of counting of such seniority, petitioner is entitled for any other benefit, the same shall be considered in accordance with law.

Sd/-
Prashant Kumar Mishra
Judge

Ankit