

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4684 of 2019**

Yaadram Yadav S/o Bholaram Yadav, Aged About 56 Years, Constable
G.D. No. 810480147, CRPF Kondagaon, District Kondagaon
Chhattisgarh

---- Petitioner**Versus**

1. Union Of India Through Secretary, Home Department, Lodhi Road,
New Dehli
2. Dy. Inspector General Of Police, Range CRPF Jagdalpur,
Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Anup Majumdar and Mr. Basant Dewangan, Advocates.
For Respondents	:	Mr. Raj Kumar Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****27.06.2019**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 11.03.2019 whereby the respondent no.2 has passed the following order:
 - i) Order of Compulsory retirement in respect of No.810480147 Ex-HC/GD Yadram Yadav (Petitioner) of D/188 Bn issued by the Commandant 188 Bn vide his O/o No. P.VIII-7/2008-EC-II(YR) dated 21.01.2009 is hereby cancelled under the provisions of GOI decision No. 3 – Para 02 of DoP&T order below rule 29 of CCS(CCA) Rules-1965.

- ii) Above Petitioner is re-instated into service with the direction to report to Commandant 188 Bn, CRPF, Kondagaon Distt (Chhattisgarh) within 20 days from the date of receipt of this order.
 - iii) The intervening period w.e.f. 22.01.2009 to the date of report on re-instatement in r/o No.810480147 Ex-HC/GD Yadram Yadav (Petitioner) of D/188 Bn is treated as "period not spent on duty" for all purpose in terms of FR 54(5). However the break in service is condoned for the purpose of pension under the provisions of GOI decision No.01 under Rule 28 of CCS(Pension) rules 1972.
 - iv) After re-instatement of above petitioner, Departmental enquiry will be conducted/resumed against the petitioner from the stage of appointing Enquiry officer and presenting officer as per provisions of Law.
2. The impugned order has been passed by respondent no.2 pursuant to an order passed by this Court on 24.09.2018 in WPS No. 488 of 2009. Vide order dated 24.09.2018 this Court had quashed the order of compulsory retirement and also the order of reduction of pension dated 21.01.2009 on the ground that the departmental enquiry conducted against the petitioner was contrary to the practice and procedure in conducting a departmental enquiry. This Court while allowing the writ petition had reserved the right of the Department to initiate a fresh enquiry if they so deem fit and pass a fresh order in accordance with the provisions of law.
3. It has been informed by the counsel for the petitioner that pursuant to the order of this Court dated 24.09.2018 the Department decided to hold a fresh enquiry and accordingly passed an order appointing an Enquiry Officer and a Presenting Officer for the same. Meanwhile, the

impugned order Annexure P-1 has been passed by respondent no.2.

4. The contention of the counsel for the petitioner is that the impugned order so far as treating the intervening period as “period not spent on duty” is impermissible, illegal and bad in law. According to the petitioner, since the Department has already initiated a departmental enquiry against the petitioner, the status of that intervening period could only have been decided only after the outcome of the departmental enquiry and not before that. According to the petitioner, if the Department fails to establish the misconduct, it has to be presumed that the disciplinary proceeding initiated against the petitioner was without any basis and thereafter the petitioner would be entitled for certain benefits for the intervening period which could only be decided after the enquiry is conducted and not before that. The petitioner thus prayed for an appropriate relief in this regard.
5. Counsel for the respondents, however, defending the impugned order submits that since this Court while disposing of WPS No. 488 of 2009 on 24.09.2018 had only set aside the order of punishment and at the same time had reserved the right of the respondents to hold a fresh enquiry, the authorities without further agitating the same has duly complied with the order of this Court. The respondent no.2, therefore, in compliance of the order has reinstated the employee and passed an order as to how the intervening period i.e. the period during which the petitioner was out of employment on account of the order of compulsory retirement dated 21.01.2009 till he was taken back in service vide order dated 11.03.2019, has to be treated. Counsel for the respondents submits that the respondents have also categorically

held that the intervening period would not affect the counting of service of the petitioner during the intervening period for the purpose of pension and other retiral dues. Thus, there is no scope for interference with the impugned order and prays for rejection of the writ petition.

6. Having heard the counsel for the parties and on perusal of the record, the facts as has been narrated by the counsel on either side are not in dispute. The petitioner was admittedly issued with an order of compulsory retirement on 21.01.2009. The said order got quashed vide order dated 24.09.2018 in WPS No. 488 of 2009. This Court had set aside the order on the ground that the enquiry was not properly conducted. This Court, on allowing the writ petition, had reserved the right of the Department to initiate fresh enquiry if they so deem fit. In compliance of the order of this Court, the respondents have in fact complied with the directives in as much as the petitioner has been reinstated in service and at the same time, the Department has availed the liberty that was granted to them by initiating a fresh enquiry.
7. Now the only issue left is whether the respondents should have decided as to how the intervening period has to be treated at this stage.
8. Under the normal circumstances, the intervening period can only be decided subject to the outcome of the departmental enquiry. The fact that the Department has reinstated the petitioner and initiated a fresh enquiry altogether, coupled with the fact that the earlier order of punishment has already been quashed by this Court, the position

practically would be that he stands restored to his original position as he stood prior to the issuance of the compulsory retirement order dated 21.01.2009. Since the departmental enquiry initiated against the petitioner is still pending consideration, the intervening period i.e. whether the petitioner would be entitled for any monetary benefit or not and whether the petitioner would be entitled for any consequential relief or not, are all which could be decided only after the departmental enquiry is finally adjudicated upon. The operative part of the impugned order so far as Clause no. iii is concerned is one which could be passed only after conclusion of the departmental enquiry and not at this juncture.

9. Given the said facts and circumstances of the case and the legal position as it stands, this Court is of the opinion that the writ petition deserves to be partly allowed to the extent that so far as Clause No.iii in the impugned order dated 11.03.2019 is concerned, the same is set aside/quashed as of now and the right of the Department is reserved for deciding the status of the intervening period subject to the outcome of the departmental enquiry initiated against the petitioner.

10. With the aforesaid observation, the writ petition stands partly allowed.

**Sd/-
P. Sam Koshy
Judge**