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

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Date of Decision: 21.08.2019

% **W.P.(C.) No. 4309/2019**

CT/GD RAM KRUSHNA SAHU

..... Petitioner

Through: Mr. N.L. Bareja, Advocate

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. B.N.P. Pathak, Sr. CGSC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J. (ORAL)

W.P.(C) No. 4309/2019

1. The present writ petition under Article 226 of the Constitution of India is filed by the petitioner, inter alia, with the following prayers:

“a) Issue an appropriate writ, order(s) or direction(s) in the nature of certiorari setting aside / quashing the impugned letter dated 07.02.2019 passed by the respondent No. 2, and the orders dated 14.01.2000 R/w order dated 12.07.2000, 12.11.2017 passed by the respondent No. 3 and the order dated 01.03.2018 passed by the respondent No. 4.

b) Direct the respondents to extend all the consequential benefits to include fixation of his Pay and Allowances / Increment, Seniority and continuity in service and pursuant thereto, for release of the arrears of the back wages for the period from 16.01.2019 to 14.12.217, as also the benefits of the MACP at par with his batch mates who were recruited alongwith him on 20.08.1994.

c) Direct the respondents to pay costs of this petition to the petitioner for compelling him to approach the Court for indulgence to seek justice.

2. The relevant facts of the case are that the petitioner was appointed as Constable (SD) in Central Reserve Police Force on the basis of the recruitment test held at Berhampur, Orissa during 16.08.1994 to 20.08.1994 and was enlisted in the Force on 30.08.1994. While in service, in the year 1998, he applied for leave to attend his sister's marriage which was scheduled to be held on 1.2.1998. After considering his application the authorities sanctioned 7 days leave in his favour w.e.f. 17.01.1998 to 27.01.1998. While the petitioner was preparing to come back to join in headquarters, he, all of a sudden, fell ill and accordingly sent application for extension of leave and joined in the headquarters on 14.06.1998. The petitioner, after joining in the headquarters, found that his application for extension of leave has not been considered for which reason he submitted medical certificates to overcome his absence but the authorities initiated disciplinary proceedings under the head of following two charges :

(1) absence of the petitioner for 138 days without sufficient cause or reasons and valid permission from the

competent authority is an offence of misconduct, disobedience of order and neglect of duty u/s 11(1) of the CRPC Act, 1949,

(2) the petitioner has tampered with the dates in the medical certificate / prescriptions before producing the same alongwith the application with malafide intention and misled his superiors, as such he has committed an offence of misconduct punishable under section 11(1) of the CRPC act 1949.

3. The enquiry officer submitted his report holding the petitioner guilty of the charges. The disciplinary authority accepted the enquiry report and passed the final order dated 15.01.1999 dismissing the petitioner from service. Against the final order dated 15.01.1999, the petitioner preferred an appeal but the appeal was also rejected vide order dated 07.08.1999. Thereafter, the petitioner filed a revision petition against the orders dated 15.01.1999 and 07.08.1999 before the revisional authority which was considered and vide order dated 14.01.2000, the revisional authority directed the petitioner to join duties in 24th Bn., CRPC within 30 days from the date of receipt of the said order. The revisional authority has also passed the order of penalty of stoppage of increment for two years with cumulative effect for the charges leveled and proved against him in the departmental enquiry.

4. The said order dated 14.01.2000 had been communicated by the revisional authority through the Superintendent of Police, Berhampur, Orissa for its onward communication to the petitioner, so that he may resume his duty but at that time the petitioner was languishing in judicial custody for the offence punishable under section 396 of the

Indian Penal Code. S.P. Berhampur after getting information at the time of communication of the order passed by the revisional authority that the petitioner was in judicial custody since 21.01.2000, accordingly informed the same to the revisional authority. However, the petitioner was subsequently acquitted of the charges by the Court vide judgment dated 28.07.2001 in S.C. No. 3 of 2001 by the Court of 1st Additional Sessions Judge, Berhampur.

5. Therefore, the revisional authority, after receiving the communication from S.P. Berhampur, passed an order on 31.12.2001, whereby the decision taken by him under the revisional jurisdiction on 14.01.2000 by which the petitioner has been reinstated into service with stoppage of increment for two years, was recalled.

6. Thereafter, the petitioner preferred the writ against the order dated 31.12.2001 in the Orissa High Court and vide judgment dated 31.08.2017, the Court held the petitioner to be entitled to get the benefit of the order passed by the revisional authority dated 14.01.2000 and accordingly the disciplinary authority was directed to take consequential steps in pursuance to the order dated 14.01.2000 passed by the revisional authority. Accordingly, the petitioner was directed to join duty at HQ/24 Bn. CRPF immediately, vide respondent No. 4 letter dated 12.11.2017.

7. The petitioner reported to 24 Bn. CRPF on 15.12.2017 (AN) and was reinstated back into the Force. However, for the intervening period from 16.01.1999 to 14.12.2017, the petitioner was treated to have not spent on duty (DIES NON) vide order dated 01.03.2018. Whereas the

petitioner was made entitled to 50% of pay and allowances during the entire intervening period, which has since been released to him during January 2019.

8. We have heard the submissions of the Ld. counsels and given our due consideration to the matter.

9. Since the respondents have been directed to comply with the order dated 14.01.2000, and in pursuance thereof the petitioner has been reinstated and directed to join his duty at unit H.Qr. i.e. at Yatri Niwas, Jawahar Tunnel, Kulgam (Jammu and Kashmir) vide order dated 12.11.2017, therefore, there appears to be no justification for treating for the purpose of consequential benefit, the period of break in service, as not spent on duty, as he has already received 50% of the pay and allowances for the entire intervening period from 16.01.1999 to 14.12.2017. If, indeed, the petitioner was being reinstated, the logical consequence of that order was, as if, there was no break in service from 15.01.1999, the date of order of removal from service.

10. However, the petitioner was directed to join the duty vide order dated 14.01.2000, but he has not joined the duty and approached the Orissa High Court in the year 2002 which observed that the petitioner is entitled to get the benefit of order passed by the revisional authority dated 14.01.2000, accordingly the disciplinary authority was directed to take consequential steps in pursuance to the order passed by the revisional authority. Since the petitioner did not join the service as per the order dated 14.01.2000, so this period i.e. from 14.01.2000 to 2002 when he approached the Orissa High Court deserves to be treated as

period not spent on duty (DIES NON). The petitioner was deprived of consequential benefit including the fixation of MACP alongwith his batch mates. Therefore, for the aforementioned reasons, this court sets aside the impugned letter dated 07.02.2019 passed by the respondent No. 2 and the order dated 14.01.2000 r/w order dated 12.07.2000, 12.11.2017 passed by the respondent No. 3 and the order dated 01.03.2018 passed by the respondent No. 4, treating the period of absence of petitioner between January 2003 to 14.12.2017 as being on duty and direct that the said period be treated as being in service. The respondents are directed to pass consequential orders extending the benefits as a result of treating the above period as the petitioner being in service including fixation of pay and allowances, increment, seniority and continuity in service and also the benefits in the MACP at par with his batch mates. However, it is made clear that the petitioner would not be entitled to any arrears of pay or back wages for the aforementioned period.

11. The petition is accordingly disposed of.

RAJNISH BHATNAGAR, J.

VIPIN SANGHI, J.

AUGUST 21, 2019

Sumant