

\$~12

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

+ **W.P.(C) 2379/2017**

CT/GD NINAMA MAHENDRA KUMAR KAVJIBHAI

..... Petitioner

Through: Mr.N.L.Bareja, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Prasanta Varma, Sr. Central Govt.
Counsel and Ms. Shalu Goswami,
Advocates with Mr. Anil Thakur, AC,
Law, CRPF and Mr. Deepak Kumar,
SI, CRPF

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

%

25.03.2019

1. The Petitioner who is a Constable in the CRPF has filed this petition seeking direction to the Respondents to treat the Petitioner as being on duty during the period 17th February, 2008 to 20th October, 2012, as if he was never terminated from services and further to extend all consequential benefits including the benefit of MACP at par with his batchmates.

2. The facts are that the Petitioner was enrolled in the CRPF on 29th December, 2005. On completion of his training he was posted to 67th Battalion CRPF on 20th February, 2007.

3. It is stated that in 2001 due to some rivalry amongst groups in the village, he was falsely implicated in FIR No.89/2001 registered at P.S. Vijay Nagar, Gujarat which was subsequently registered as Criminal Case No. 196/01. In

the trial the Petitioner was acquitted by order of the Criminal Court dated 19th February, 2007. While completing the CRPF form No. 25 at the time of his recruitment, the Petitioner failed to indicate the pendency of the above case. Based on the information received about his involvement in the criminal case and the consequent acquittal, the Commandant 67th Battalion issued an order dated 16th February, 2008 terminating the Petitioner services.

4. The Petitioner then approached the High Court of Gujarat in Special Civil Application No.10691/2012 which was disposed of by an order dated 4th September, 2012 directing the IGP CRPF (Respondent No.3) to hear and dispose of Petitioner's appeal against the dismissal order within three months.

5. By an order dated 28th September, 2012 Respondent No.3 ordered the reinstatement of the Petitioner in service within 30 days of the receipt of said order. However, the period from 17th February, 2008 till the date of his reporting to the 49th Battalion to be treated as 'not on duty'.

6. Pursuant to the above order, the Petitioner reported to the 49th Battalion and was taken on the strength of the said unit on 21st October, 2012. However, the period between 17th February, 2008 and 21st October, 2012 was shown to be 'non-duty' by an Office Order dated 30th November, 2012 passed by the Commandant 49th Battalion, CRPF.

7. The Petitioner states that he kept making representations against the above treatment of the period of break in service but to no avail. His

representation was rejected by the Director General, Police (Respondent No.2) by a letter dated 5th December, 2016. Thereafter, the present petition was filed.

8. In the reply filed by the Respondents it is stated that the order reinstating him in service passed by Respondent No.2 while directing the period of absence to be treated as 'non-duty' was justified given the nature of the misconduct. What is held against the Petitioner is a deliberate concealment of pendency of the criminal case and not so much the fact that he was acquitted in that case.

9. This Court has heard the submissions of learned counsel for the parties.

10. Barring the single act of non-disclosure of the criminal case in which he was acquitted, there appears to be no other instance impinging on the character or conduct of the Petitioner. With the Appellate Authority having substituted the punishment of dismissal from service with reinstatement with effect from the date he reported again at the 49th Battalion on 20th October, 2012, there appears to be no justification in not treating, for the purposes of consequential benefits, the period of break in service as being not on duty. If indeed the Petitioner was being reinstated, the logical consequence of that order was that as if there was no break in service from 17th February, 2008 the date of the order of dismissal from service. The Petitioner was deprived of the consequential benefits including the fixation of MACP along with his batchmates and such a harsh consequence is not warranted for considering the facts of case.

11. For the aforementioned reasons, the Court sets aside the orders dated 28th September, 2012 and 30th November, 2012 treating the period of absence of the Petitioner i.e. between 17th February, 2008 to 20th October, 2012 as being on 'non-duty' and directs that the said period be treated as being in service. Consequently, the letter dated 5th December, 2016 issued by Respondent No.2 rejecting the Petitioner's representation is also set aside.

12. The Respondents are directed to pass consequential orders, within eight weeks from today, 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 on par with his batchmates who were recruited on 29th December, 2005. However, it is made clear that the Petitioner would not be entitled to any arrears of pay or back wages for the aforementioned period.

13. The petition is accordingly disposed of.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 25, 2019

mw