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

+ **W.P.(C) 9613/2018**

**EX. CONSTABLE SHASHI DUTT SHARMA** ..... Petitioner

Through: Mr.T.J. Raina and Mr.Sukh Dev  
Singh, Advocates.

versus

**UNION OF INDIA AND ORS.** ..... Respondents

Through: Mr.Vivek Goyal, CGSC with  
Mr.Shivvanshu Tiwari, DG BSF and  
Mr.Ram Krishan Kumar, Advocate.

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE TALWANT SINGH**

**ORDER**

% **31.10.2019**

1. The Petitioner has approached this Court for quashing of an order dated 9<sup>th</sup> March, 2015 passed by the Directorate General of the Border Security Force ('BSF') fixing the Petitioner's pay after his reinstatement, pursuant to a judgment dated 6<sup>th</sup> August, 2012 passed by this Court in his favour in Writ Petition (Civil) 905/1998.

2. The background facts are that against the order of his dismissal the Petitioner had filed the aforementioned W.P.(C) 905/1998 in this Court. The said writ petition came to be disposed of on 6<sup>th</sup> August, 2012, with the Court setting aside the order of his dismissal on the ground that for the alleged misconduct the said punishment was disproportionate. Consequently, while

quashing the order imposing a penalty of dismissal from service on the Petitioner, this Court directed that he should be 'reinstated in service, but without any back wages and this loss of wages would be sufficient penalty.' The Court further directed that the interregnum period during which the order of dismissal subsisted i.e. for the period from the date of dismissal to the date of reinstatement, 'shall be treated as spent on duty for the purposes of pension.' The Respondents were directed to comply with the directions within six weeks.

3. Consequent upon the above judgment, the Petitioner was reinstated in service. By an order dated 9<sup>th</sup> March, 2015 his pay was fixed at the minimum of the scale of pay band 1 (5,200-20,200 + grade pay of 2,000) with effect from 6<sup>th</sup> August, 2002. In the said order, it was noted that the High Court had directed the period of absence from the date of dismissal to the date of reinstatement as on duty 'for the purposes of pension only.'

4. It will be noticed that the word 'only' does not occur in the operative portion of the judgment dated 6<sup>th</sup> August, 2012 of this Court. This word appears to have been added by the Respondents themselves.

5. The Petitioner represented against the above order, which was rejected by the order dated 7<sup>th</sup> May, 2018. In this order in para 3 it is stated as under:

“3. Since the Hon'ble Court has passed the order directing that the period of absence be treated, as duty for specified purpose i.e. for pension only, which means that the period of absence for other purposes should be treated as 'non-duty' in the light of Government of India's order No. 3 below FR (Fundamental Rules)-54-B.”

6. Learned counsel for the Respondent has also referred to the same Fundamental Rules (FR) 54, and in particular to sub-clause 5 thereof, which states that if the period of absence from duty was to be treated as period spent on duty for purposes other than for pension, then there has to be a specific order in that regard.

7. It will straightaway be seen that the aforementioned FR 54 governs the orders passed by the 'competent authority' in the event that such competent authority seeks to interfere with the order of punishment in disciplinary proceedings. In the present case, however, this Court in its judgment dated 6<sup>th</sup> August, 2012 while directing reinstatement, was not exercising powers under FR 54. The directions of this Court were in exercise of its powers under Article 226 of the Constitution. The extracted paragraph 14 of the judgment dated 6<sup>th</sup> August, 2012 clearly indicates that the Court is of the view that the loss of back wages 'would be sufficient penalty.' The word 'sufficient' qualifying the word 'penalty' is indicative that there could not be any other penalty apart from the loss of back wages. Once it is clear that the dismissal order had to go, all consequences would flow, except that the Petitioner was not entitled to back wages. The Court did not have to specifically indicate that the period of absence would be treated as period spent on duty for all purposes. It however, did make it explicit in the context of calculation of 'pension'.

8. The Court is, therefore, unable to accept the stand of the Respondents that in the absence of a specific direction to treat the period of absence as period spent on duty for purposes other than for calculation of pension, it is not

obligatory to Respondents to treat this period as period spent on duty for the purposes of fixation of pay.

9. It is noticed at this stage that the Special Leave Petition [SLP (C) No. 11803/2013] filed by the Respondents against the aforementioned judgment dated 6<sup>th</sup> August, 2012 of this Court in W.P.(C) 905/1998 was dismissed by the Supreme Court on 1<sup>st</sup> August, 2014 with the clarification that it would not be treated as a precedent 'in any other case'.

10. As far as the present petition is concerned, the Court while setting aside the impugned order dated 9<sup>th</sup> March, 2015 and subsequent orders of the Respondents reiterating the said order, directs the Respondents to fix the pay of the Petitioner by treating the period of absence as period spent on duty and issue corresponding orders refixing his pension. This exercise be completed within eight weeks from today. It is needless to state that since the earlier judgment is not to be treated as a precedent, even this order will not be treated as a precedent.

11. The petition is allowed in the above terms.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**OCTOBER 31, 2019**

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