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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION***

WRIT PETITION NO. 5971 OF 2015

Subhash S. Chavan

... Petitioner

V/s.

Union of India and Ors.

... Respondents

Mr. Sandeep Marne for the Petitioner

Mr. T.J. Pandian for the Respondents

***CORAM : NITIN JAMDAR &
M.S. KARNIK, JJ.***

DATE : 5 FEBRUARY 2020.

P.C. :-

Heard learned Counsel for the parties.

2. The Petitioner has challenged the order passed by the Respondent – Chief Security Commissioner, Railway Protection Force, CST, Mumbai dated 3 February 2015 directing the intervening period between his dismissal and reinstatement be treated as not spent on duty, however directing that for this period he would be entitled for 25% pay and allowances.

2. The Petitioner was appointed as Sub-Inspector in the year 1979. He was promoted as Inspector in the year 1989. In connection with the criminal case the Petitioner was arrested and was placed under suspension on 21 May 1999. The suspension was subsequently revoked. The Petitioner was dismissed from service on 4 July 2003. The Petitioner had filed a Criminal Appeal to challenge his conviction by the Special Judge dated 14 February 2003. The Criminal Appeal was allowed and the Petitioner was acquitted. Thereafter, the Petitioner was reinstated in service on 15 July 2014. The Petitioner made representations for treating the period between dismissal and reinstatement as the period spent on duty. His representations were rejected by the impugned order. The impugned order reads thus :-

“ In continuation to this office order No.99/2014 circulated under letter No. E 115 / CSC / DAR/Ex.IPF/SSC/CNHL/14 dated 15/07/2014 in favour of Shri S.S. Chavan, Inspector CNHL (now retired from service w.e.f. 31/12/2014) the intervening period i.e. from the date of his dismissal from service till the date his reinstatement be treated as not spent on duty. However, for this period he shall be entitled for 25% of pay and allowances as admissible to him.”

3. There are no reasons given in the impugned order as to why the period is not to be treated as on duty and also the reason for 25% of allowances.

4. The Indian Railway Establishment Code by which the Petitioner is governed, lays down a procedure for treating such period as on duty or otherwise, the extract of the Rules is placed on record. Rule 1343 (2) reads thus :-

“ Where the authority competent to order re-instatement is of opinion that the railway servant who has been dismissed, removed or compulsorily retired has been fully exonerated, the railway servant shall subject to the provisions of sub-rule (6) below be paid the full pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be. Provided that where such authority is of opinion that the termination of the proceedings instituted against the railway servant had been delayed due to reasons directly attributable to the railway servant, it may, after giving him an opportunity to make his representation within 60 days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the railway servant shall, subject to provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.”

5. In this Rule it is stated that an employee has to be given an opportunity to make a representation and after considering the representation for reasons to be recorded in writing the amount of such pay and allowances are to be determined and the case is falling

under sub-rule (2), the period on duty and period of suspension preceding dismissal, removal or otherwise is to be treated as a period spent on duty. Similar language is used in Rule 4 and 5 thereof. It is clear that the Rules postulate an opportunity to be given and a reasoned order.

6. The impugned order gives no reason as to why the conclusion has been reached. This exercise will have to be carried out by the Respondents. It cannot be supplemented by affidavit in this Petition.

7. In these circumstances, we dispose of the Writ Petition by setting aside the order dated 3 February 2015. The Respondent No.2 will take an appropriate decision as per law in respect of treatment of the relevant period whether as on duty or otherwise and the benefits thereof to the Petitioner.

8. The Writ Petition is accordingly disposed of in the above terms. Considering the fact that the issue is pending for some time, the decision would be taken at the earliest.

M.S. KARNIK, J.

NITIN JAMDAR, J.

**Jyoti
P.
Pawar**

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by Jyoti P.
Pawar
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