

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 25952, 28969 & 28970 OF 2013

AND

M.P. NOS. 1, 1 & OF 2013

W.P. No. 25952 of 2013

D.Ayyappan Raj

.. Petitioner

- Vs -

1. The Union of India
rep. By its Secretary to Govt.
Ministry of Home Affairs
New Delhi.
2. The Director General
Border Security Force
CGO Complex, Lodhi Road
New Delhi.
3. The Director General
Central Industrial Security Force
CGO Complex, Lodhi Road
New Delhi 110 003.
4. The Deputy Inspector General
Central Industrial Security Force
South Zone, Besant Nagar
Chennai 600 09.
5. The Commandant
Head Quarters No.133
Battalion BSF, Dantiwada
Banaskantha District
Gujarat 385 505.
6. The Commandant
Central Industrial Security Force
Chennai Airport, Meenambakkam
Chennai 600 027.

7. The Deputy Commandant
Central Industrial Security Force
Airport Security Guard, Trichy. .. Respondents

W.P. Nos. 28969 & 28970 of 2013 :

C.Nanthan .. Petitioner in WP 28969/13

Rohitasha Jatav .. Petitioner in WP 28970/13

- Vs -

1. The Union of India
rep. By its Secretary to Govt.
Ministry of Home Affairs
New Delhi.
2. The Director General
Central Industrial Security Force
CGO Complex, Lodhi Road
New Delhi 110 003.
3. The Deputy Inspector General
Central Industrial Security Force
Neyveli Lignite Corporation (N)
Neyveli, Cuddalore District.
4. The Assistant Commandant/Admn.
Central Industrial Security Force Unit
Neyveli Lignite Corporation
Neyveli, Cuddalore District.
..Respondents in both petitioner

W.P. No.25952 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to the order passed by the 5th respondent in his Order No.Estt.X-222/Res (GC)/2013/2219-22 dated 8.4.13 and quash the same and to direct the respondents to count the services of the petitioner rendered in Border Security Force from 24.10.01 to 9.11.03 and in Central Industrial Security Force from 10.11.03 to 14.4.12, i.e., 10 years 6 months and 17 days and to pay pension from 15.9.12 and continue to pay to the petitioner.

W.P. No.28969 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to the order passed by the 2nd respondent in his Letter No.E-37014/10/201/Fire (Part)-398 dated 27.5.13 communicated by the 5th respondent in letter No.E-19098/CISF/NLC/DOC/13-3795 dated

10.06.13 and quash the same and direct the respondents to count the services of the petitioner rendered from 29.7.01 to 31.3.12 in CISF, i.e., 10 years and 8 months in the Central Industrial Security Force and to pay pension from 1.4.12 and continue to pay to the petitioner.

W.P. No.28970 of 2013 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to the order passed by the 2nd respondent in his Letter No.E-37014/10/2003/Fire (Part)-398 dated 27.5.13 communicated by the 5th respondent in letter No.E-19098/CISF/NLC/DOC/13-3794 dated 10.06.13 and quash the same and direct the respondents to count the services of the petitioner rendered from 14.8.00 to 31.3.12 in CISF, i.e., 11 years and 7 months in the Central Industrial Security Force and to pay pension from 1.4.12 and continue to pay to the petitioner.

For Petitioners: Mr. Arun Pradeesh in WP 25952/13
No Appearance in WP 28969 & 28970/13

For Respondents: Mr. Venkatasamy Babu in
WP 28969 & 28970/13
Mr. D.Simon in WP 25952/12

COMMON ORDER

W.P. No.25952/2013

The case of the petitioner is that he joined as ASI/RM in the Border Security Force (for short 'BSF') on 24.10.01 and after serving for two years, he was relieved on 9.11.03 on the basis of his letter of resignation, which was submitted for the reason that he had secured appointment as Sub-Inspector in the Central Industrial Security Force (for short 'CISF') on 10.11.03. After putting in a service of 8 years and 6 months in CISF, he was relieved on 14.4.12, whereinafter, the petitioner joined BHEL, Trichy. A representation was submitted by the petitioner to the 5th respondent on 1.4.13 with request to count the services of the petitioner rendered in BSF to the extent of 2 years and 13 days. However, the said representation was rejected by the 5th respondent vide order dated 8.4.13 on the ground that the petitioner had resigned from the services of BSF and, therefore, the petitioner is not entitled to the benefits provided u/s 26 (2) of the Central Civil Services (Pension) Rules, 1972 (for short 'the Rules'). Pursuant to the said rejection, the petitioner made a representation to the 6th respondent on 13.4.13 with request to furnish information regarding the service rendered in BSF. In view of the order passed by the 5th respondent, the service of the petitioner was not counted and no pension was paid. Aggrieved by the said

impugned order of the 5th respondent, this writ petition has been filed.

W.P. No.28969/2013

2. The case of the petitioner is that he joined as Constable in CISF on 29.7.01 and after serving for 10 years and 8 months, the petitioner resigned on 31.3.12 by tendering resignation letter and presently the petitioner is working in BHEL, Trichy from 16.4.12 as Sub-Inspector (Fire). It is the case of the petitioner that is service in the CISF from 29.7.01 to 31.3.12, i.e., 10 years and 8 months should be counted for the purpose of pension. Therefore, the petitioner submitted a representation to the 4th respondent with request to count the services rendered by him in CISF. However, by order dated 10.6.13, the 4th respondent informed the order passed by the 2nd respondent rejecting the request on the ground that the petitioner has resigned his previous job on account of domestic problem and, therefore, the benefits provided u/s 26 (2) of the Rules are not applicable to the petitioner.

W.P. No.28970/2013

3. The case of the petitioner is that he joined as Constable in CISF on 14.8.00 and after serving for 11 years and 7 months, the petitioner resigned on 31.3.12 by tendering resignation letter and presently the petitioner is working in BHEL, Trichy from 16.4.12 as Sub-Inspector (Fire). It is the case of the petitioner that is service in the CISF from 14.8.00 to 31.3.12, i.e., 11 years and 7 months should be counted for the purpose of pension. Therefore, the petitioner submitted a representation to the 4th respondent with request to count the services rendered by him in CISF. However, by order dated 10.6.13, the 4th respondent informed the order passed by the 2nd respondent rejecting the request on the ground that the petitioner has resigned his previous job on account of domestic problem and, therefore, the benefits provided u/s 26 (2) of the Rules are not applicable to the petitioner.

4. The matters have been on board since 10th July, 2020 and have been adjourned at request a few times. Though learned counsel appeared for the petitioner in W.P. No.25952/13 even on the earlier occasion as also today, however, there was no representation for the petitioners in W.P. Nos.28969 and 28970/13 during the last hearing. Even today, there is no representation for the petitioners in W.P. Nos.28969 and 28970/13. However, in view of the fact that the issue raised is one and the same in all the writ petitions, this Court proceeds to dispose of the petitions on merits.

5. Learned counsel appearing for the petitioner in W.P. No.25952/13 submits that the petitioner, though had submitted

letter of resignation on 24.10.03 on his securing a job in CISF, however, as no orders were passed on the said letter, he had once again submitted another letter of resignation on 6.11.03 citing domestic problem, which is only for the purpose of getting orders of relieving for joining the duty at CISF. The inaction on the part of the respondent/BSF was the reason for giving the reason as domestic problem. It is the further submission of the learned counsel for the petitioner that for the purpose of obtaining NOC for applying for a job with CISF, the petitioner had submitted letter along with application seeking NOC for submitting application to CISF, but no orders were passed on the said NOC. The inaction of the respondent/BSF on all counts has gravely prejudiced the petitioner. The petitioner has all along followed the procedure contemplated and, therefore, the services rendered by the petitioner in BSF should be counted along with the service rendered by the petitioner in CISF so as to enable him to get pensionary benefits.

6. Learned standing counsel appearing for the respondents submitted that none of the petitioners have obtained NOC and, thereafter, taken up the other assignment and in the absence of the same, they are not entitled to the benefits u/s 26 (2) of the Rules. It is the further submission of the learned counsel for the respondents that the resignation letter submitted by the respective petitioners reveal that they had resigned their post due to domestic problem and, therefore, their representation for counting their service rendered in the erstwhile establishment cannot be considered for the purpose of payment of pension. It is the further submission of the learned counsel for the respondents that insofar as the petitioners in WP Nos.28969 and 28970/13 are concerned, though they have given representation for converting their normal resignation into technical resignation, the said representation has been rejected by the competent authority as they have given their resignation citing domestic problems, for the purpose of joining in another establishment. In the case of the petitioner in WP No.25952/13, it is the submission of the learned counsel for the respondents that not only the resignation is given citing domestic problem, but the resignation have been given in the year 2003 and the petitioner has come before this Court only in the year 2013 by filing the present petition. The delay for filing the petition after such a long time having not been explained by the petitioner, this Court should dismiss the said petition on the ground of delay.

7. This Court considered the rival submissions advanced by the learned counsel appearing on either side and also perused the materials available on record to which this Court's attention was drawn.

8. All the petitioners herein claim the benefit of Section 26 (2) of the Rules, which has been denied by the respondents citing that they are not entitled for the benefit available u/r 26 (2) of the Rules. For better clarity, Rule 26 (2) of the Rules is extracted hereunder :-

"26. Forfeiture of service on resignation -

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

* * * * *

9. Rule 26 (1) of the Rules speaks of forfeiture of past service, on resignation, unless it is withdrawn by the authority in public interest. Rule 26 (2) provides for counting of past service, on resignation, provided the individual has submitted the same and obtained proper permission to take up another appointment under the Government. From a clear reading of Rule 26 (2), it is evident that the individual is permitted to have the past service counted upon resignation from the former job, provided he has taken proper permission for taking up the latter job under the Government.

10. It is not in dispute that the petitioners have got relieved from their jobs by submitting resignation letters and, thereafter, joined the new post. It is the stand of the respondents that the resignation of the petitioners being on the ground of domestic problem, it is not open to them to claim the past service to be counted. It is the stand of the petitioners in W.P. Nos.28969 and 28970/13 that though they had submitted resignation citing domestic problem, however, in identical situation, for other persons, the respondents have treated the said resignation as technical resignation to enable them to count their services. Though such a stand is taken by the petitioners above, a perusal of the rejection of the order passed on the representation of the petitioners reveal that the respondents, citing that the resignation of the petitioners was on the basis of domestic problem, had rejected their claim for counting the service citing Rule 26 (2).

11. The petitioners in W.P. Nos.28969 and 28970/13, though claim parity with persons similarly placed, however, it is to be pointed out that no material whatsoever has been submitted

before this Court to suggest that different yardstick has been adopted insofar as the petitioners are concerned. Further, it is clear from Rule 26 (2) that the past services would be deemed to have been forfeited if the persons, who take up another appointment, without obtaining proper permission from their employers. In the case on hand, the petitioners herein having no obtained prior and proper permission to compete in another selection process and that their application for permission having been rejected on the ground of exigency, the impugned order not acceding to the claim of the petitioners for counting their past service cannot be found fault with.

12. Insofar the petitioner in W.P. No.25952/2013 is concerned, it is evident from the records that no permission has been granted to the petitioner for participating in another selection process, which makes it clear that the petitioner, on his own volition has participated in another selection process and has got himself selected and had joined the said post. The case of the petitioner was, therefore, not considered for counting the past service in view of the bar u/s 26 (2). The petitioner having taken up another appointment without the proper permission of the erstwhile employer, the petitioner has forfeited his rights for having his past service counted. Therefore, the petitioner is not entitled for having his service counted and he is barred from imploring upon this Court to issue a direction to the concerned respondents to count his past service which would be nothing but an act not in conformity with Rule 26 (2) of the CCS Rules.

13. Further, it is to be pointed out that the petitioner had, way back in the year 2003, left the services of BSF and had taken up appointment in CISF in a higher position for his betterment and ha had kept silent for a decade and only in the year 2013, had preferred this petition seeking a direction to count his service. Further, his representation to have his past service counted is only in the year 2012-2013, which is almost after a decade. There is neither any justification for submitting the said representation with such a long delay of almost ten years, nor there is any explanation in the affidavit filed before this Court as to the reason for the delay in seeking such a relief. The petitioner having not explained the reason for the delay in approaching the respondents with the representation after almost a decade, the case of the petitioner is definitely hit by laches and, this Court, in exercise of its inherent jurisdiction, would not be justified in granting any relief to the petitioner, when there is no possible and plausible explanation on the part of the petitioner for such a long delay. On this ground as well, the case of the petitioner suffers and it is liable to be dismissed.

14. Further, it is to be pointed out that the petitioners in all the petitions have, on their own volition, without taking the permission of their previous employer, for their betterment and for higher position have left the services of the respective respondents. That being the case, the petitioners, in foresight, having left the services for their benefit at the earliest point of time, in hindsight, it is not open to the petitioners to come before this Court at the twelfth hour to redeem their past service, which is not permissible and available to them in view of Rule 26 (2) of the CCS Rules. The petitioners, on their own volition, having forfeited their past service by joining the new post without obtaining prior permission, the respondents were justified in rejecting the claim of the petitioners for counting their past service u/r 26 (2) of the CCS Rules and this Court finds no error in the said order passed by the respective respondents.

15. For the reasons aforesaid, these writ petitions fails and, accordingly, the same are dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Govt.
Ministry of Home Affairs
New Delhi.
2. The Director General
Border Security Force
CGO Complex, Lodhi Road
New Delhi.
3. The Director General
Central Industrial Security Force
CGO Complex, Lodhi Road
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Neyveli, Cuddalore District.
9. The Assistant Commandant/Admn.
Central Industrial Security Force Unit
Neyveli Lignite Corporation
Neyveli, Cuddalore District.

+1 cc to M/s.K.Arun Prakash, Advocate Sr.No. 27109

W.P. NOS. 25952, 28969
& 28970 OF 2013

PA(CO)
RMP(16/10/2020)

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