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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.9382 OF 2013

M.Mathaiayan

... Petitioner

-Vs-

1. The Director General,
Central Reserve Police Force,
C.G.O. Complex,
Lodhi Road,
New Delhi - 110 003.
2. The Inspector of Police,
Southern Sector,
Central Reserve Police Force,
Hyderabad.
3. The Deputy Inspector General of Police,
CRPF, Avadi,
Chennai - 600 065.
4. The Assistant Commandant [Accounts],
Central Reserve Police Force,
Group Centre, Avadi,
Chennai - 600 065.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 4th respondent in his order No.F-IV-1/2012-13WAF dated 19.02.2013 and the order passed by the 3rd respondent dated 26.02.2013 in his office order No.P.XVII-1/2013-SRC-1-GC and quash the same direct the respondents to pay actual salary for the period from July 2009 to March 2010 and the salary from April 2010 to December 2011 and MACP benefits and revised salary from 2008, bonus for the years 2009-2010, 2010-2011 and medical claim to the petitioner.



For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.C.Kulanthaivel
Senior Panel Counsel

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ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein, while on patrolling duty in the hilly terrain area of Chakla Salta, District Udhampur of Jammur & Kashmir, slipped from a narrow track and fell down from a steep cliff on 30.06.1999, owing to which, he sustained severe compression fracture and a tissue injury in the neck. The petitioner is now aggrieved against the order treating his period of absence between 17.06.2009 and 03.11.2011, totalling 870 days, as unqualified service. The petitioner has now reached the age of superannuation.

3. During his service, the petitioner was transferred from Avadi to Kashmir on 16.06.2009. The transfer order was challenged by the petitioner and ultimately, in an order passed in W.A.Nos.1943 and 1944 of 2009, dated 07.09.2010, the Hon'ble Division Bench of this Court had directed the respondents not to implement the order of transfer. Even while the Writ Petition and the Writ Appeal were pending, there was an order of status quo and as such, the transfer order was not given effect to. While that being so, the respondents have taken into account the period from the date of transfer till the date on which the Writ Appeal was disposed of, i.e. 07.09.2010, while regulating the petitioner's absence. Apparently, this period, which has been included while the absence was regularized, cannot be sustained, in view of the interim orders already granted by this Court.

4. Moreover, though the petitioner herein had stated that he was willing to join duty after the interim order was passed, there is nothing on record nor any statement in the counter affidavit to show that the respondents herein had called upon the petitioner to join duty at Avadi Battalion. The counter affidavit merely states that with effect from 04.11.2011, the petitioner was taken back in Avadi Battalion and was directed to perform light duties till his superannuation.

5. The learned Standing Counsel appearing for the respondents submitted that the petitioner has not placed any material to substantiate that he had offered to join duty. I am not in agreement with such a submission. When this Court had stayed the transfer order and thereafter directed them not to



implement the transfer order, there was a duty cast on the respondents to call the petitioner to rejoin duty, which has apparently not been done in the present case.

6. When the respondents have not established before this Court that they have called upon the petitioner to join duty after the transfer order was stayed and final orders were passed in the writ appeal, the present impugned order, refusing to treat the period between 17.06.2009 and 03.11.2011 as unqualified service, is unjustifiable and illegal and hence, the same cannot be sustained.

7. In the light of the above observations, the impugned orders dated 19.02.2013 and 26.02.2013 are quashed. Consequently, there shall be a direction to the third respondent herein to pass appropriate orders, by regulating the petitioner's period of service between 17.06.2009 and 03.11.2011 as qualified service and release all his annual increments from 2009 to 2011. Consequently, the petitioner's pay shall also be re-fixed, in accordance with such regularization and grant of annual increments, and the monetary benefits shall be disbursed to the petitioner, atleast within a period of eight (8) weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed, accordingly. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Director General,
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New Delhi - 110 003.
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4. The Assistant Commandant [Accounts],
Central Reserve Police Force,
Group Centre, Avadi,
Chennai - 600 065.

+1cc to Mr.A.S.Mujibur Rahman, Advocate, S.R.No.14705
+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.14751

W.P.NO.9382 OF 2013

RSV(CO)
PBS/18/03/2022