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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.2752 of 2014

G.Bharathi
S/o.P.Govindaraj

... Petitioner

Vs.

The Commandant,
Border Security Force,
194th Battalion, Head Quarter,
Jaisalmer, Rajasthan.

... Respondent

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the respondent herein in his proceedings No.Estt /194Bn /Misc / 13 / 18349, Head Quarter, 194 Bn BSF, Dabla, Jaisalmer dated 13.12.2013 and quash the same and consequently, issue a direction directing the respondents herein to treat the period of suspension from 13.07.2002 to 13.01.2005 as duty for all purposes and further, direct the respondents to grant all service and monetary benefits for the above suspension period within a time frame.

For Petitioner : Mr.G.Bala
for M/s.G.Bala and Daisy

For Respondent : Mr.N.Ramesh
Senior Standing Counsel

O R D E R

The grievance of the petitioner is that the period of suspension undergone by the petitioner has not been regularised as duty with full salary.

2. Learned counsel for the petitioner made a submission that a criminal case has been registered against the petitioner when he was on leave and was staying in his native place. However,



the said criminal case ended with an order of acquittal and the appeal filed by the de facto complainant was also dismissed. Thus, the respondent has not proceeded with the departmental disciplinary proceedings and no charge memo has been issued. Taking into consideration the judgment of the criminal Court of law, the period of suspension was regularized. However, arrears of salary have not been paid.

3. Learned counsel for the petitioner reiterated that the petitioner is eligible for arrears of pay for the period of suspension by treating the period as duty for all purposes. The said contention is objected by the respondent by stating that the petitioner was on leave with effect from 24.06.2002 to 23.07.2002 and allegedly, committed a criminal offence u/s.302 IPC on 13.07.2002 at his home town. He was suspended on 13.07.2002. The petitioner stayed at his home town without leave from 13.07.2002 to 13.01.2005 to defend in the case in the Court of law. Therefore, in terms of GOI Order No.2 under FR-54B, the period of absence from duty of the petitioner was regularized by granting him Earned Leave (EL) and Half Pay Leave (HPL) at the credit of the petitioner's account and remaining period was treated as 'Dies-non' upto 13.01.2005 by the Commandant, 194 Bn BSF vide order No.Estt/194 Bn/Disc-GB/05/4069-72 dated 01.04.2005. The details regarding the regularization of the suspension period are stated as under:

"(a) Suspension period from 13.07.2002 to 25.09.2002 was regularized by granting 75 days EL.

(b) Suspension period from 26.09.2002 to 31.12.2002 was regularized by granting 97 days HPL.

(c) Suspension period from 01.01.2003 to 30.01.2003 was regularized by granting 30 days EL.

(d) Suspension period from 31.01.2003 to 01.06.2003 was regularized by granting 122 days HPL.

(e) Suspension period from 02.06.2003 to 13.01.2005 i.e. for 592 days was treated as 'Dies-non' (No pay and allowances shall be paid for the period of 'Dies-non' as per rules)."

4. This Court is of the considered opinion that the petitioner has admittedly faced the criminal trial, but acquitted by the competent Court of law. The department has not continued the departmental disciplinary proceedings after placing the petitioner under suspension. No charge memo has been issued despite the fact that the criminal case is not a bar for disciplinary proceedings. The period of leave was regularized so



also the period of suspension. However, the benefit of full salary was not paid. In view of the fact that the period of suspension was regulated as eligible leave and the applicable benefits were granted to the petitioner, this Court is not inclined to grant the relief as such sought for in the present writ petition. However, the period of suspension, which is regularized by the authorities, shall be taken into account for the purpose of calculation of qualifying service for grant of pensionary and other consequential benefits.

With these directions, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gm

To

The Commandant,
Border Security Force,
194th Battalion, Head Quarter,
Jaisalmer, Rajasthan.

+1cc to M/s.G.Bala and Daisy, Advocate, S.R.No.33158

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NSK/17/06/2022