



W.P.(MD)No.2200 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.2200 of 2014

T. Sathish Kumar

... Petitioner

vs.

- 1.The Union of India,
represented by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
- 2.The Director General,
Central Reserve Police Force,
CGO Complex, Lodhi Road,
New Delhi -110 003.
- 3.The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi -110 003.
- 4.The Inspector General,
Central Reserve Police Force,
Central Sector Lucknow.



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5.The Deputy Inspector General,
Central Reserve Police Force,
Group HQRS Trisdi, Amethi,
Uttar Pradesh.

6.The Deputy Inspector General,
Central Reserve Police Force,
Group Centre, Dhurva Ranchi.

7.The Commandant,
214, Battalion,
Central Reserve Police Force,
Latehar, Jharkhand.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 7th respondent in his Order No.M.V-1/12.EC.I, dated 04.11.2012 and the consequential order passed by the 5th respondent in his order No.M-5/2013/R.K.(RTI), dated 02.08.2013 and to quash the same and to direct the respondents to count the services of the petitioner rendered from the period from 02.09.2006 to 13.05.2010 and for the period from 14.05.2010 to 10.04.2012 in the CISF and in the CRPF and to pay pension from 11.4.2012 counting as service rendered and leave encashment (earned leave and half pay leave) and continue to pay to the petitioner and to refund a sum of Rs.1,74,048/- for a period from 10.04.2012 to till the payment is made at 12% interest.



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For Petitioner : Mr.K.Vadivelu
for Mr.A.S.Mujibur Rahman
For Respondents : Mr.C.Nandagopal

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call quash the order passed by the 7th respondent in his Order No.M.V-1/12.EC.I, dated 04.11.2012 and the consequential order passed by the 5th respondent in his order No.M-5/2013/R.K.(RTI), dated 02.08.2013 and to direct the respondents to count the services of the petitioner rendered from the period from 02.09.2006 to 13.05.2010 and for the period from 14.05.2010 to 10.04.2012 in the CISF and in the CRPF and to pay pension from 11.4.2012 counting as service rendered and leave encashment (earned leave and half pay leave) and continue to pay to the petitioner and to refund a sum of Rs.1,74,048/- for a period from 10.04.2012 to till the payment is made at 12% interest.

2. The brief facts of the case are that the petitioner joined as Constable in Central Industrial Security Force on 02.09.2006. After getting technical



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resignation, the petitioner joined CRPF on 14.05.2010 as Sub Inspector/GD. The petitioner submitted a resignation letter on 11.04.2012 from CRPF and applied for NOC on 12.01.2012 and 09.03.2012. But the respondents have not replied for both the letters. The petitioner was deployed at Head Quarters, Giridih and the petitioner was on leave on 12.01.2012. Therefore, the petitioner applied through fax and in the month of March, 2012, the petitioner was deployed to Dalda factory Lathear District and on that day also he was on leave.

3.The contention of the petitioner is that 214 Bn Dett Quarter was situated in Giridih Town and it is 240 kilometer away from that Dett Head Quarters and the petitioner's company 'F' was deployed on Oriya. It is 10 Kilometer away from 214 Dett Head quarter. The transportation from Dett Head quarter to F Company was critical because the area was based on Naxal Zone, without “Road Opening Party” no movement was allowed, but the petitioner individually went to Oriya for forwarding the NOC from commanding Officer F and it was also given on 14.03.2012, in between this time the petitioner enquired the clerk who was



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dealing the NOC and the respondents replied still it was under process, thereby the respondents delayed in granting the NOC. Inspite of correspondence with the respondents, the petitioner could not get NOC within two months and it was informed by the ministerial staff that if the petitioner wants to join BHEL, as Sub Inspector / Security he should resign CRPF the job. Since the petitioner ought to join BHEL within 30 days, the petitioner left with no option, submitted his resignation. The respondents also misdirected the petitioner to submit a resignation letter stating due to domestic problem like mother illness the petitioner is resigning the post and it was directed not to mention about the selection in BHEL as Sub Inspector. As per the instruction of ministerial staff, the petitioner submitted his resignation stating that the petitioner resigns due domestic problem. Thereafter, the seventh respondent directed the petitioner to deposit a sum of Rs.1,74,048/- towards training charges, vide order, dated 03.04.2012. Accordingly, the petitioner deposited the said amount and he was permitted to resign the job. The petitioner joined BHEL, Trichy, with effect from 16.04.2012, as Sub Inspector/Security.



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4. The contention of the petitioner is that he is entitled for technical resignation with pensionary benefits from 02.09.2006 to 11.04.2012 and also entitled to full encashment as per DOPT order No.28016/5/86-Estt(c), dated 31.01.1986, apart from the refund for a sum of Rs.1,74,048/- with 12% interest which was collected illegally and contrary to the Rule 17 A of CRPF. However, the respondents have denied through impugned orders. Aggrieved over the same, the present Writ Petition is filed.

5. The respondents have filed a counter affidavit stating that there is no jurisdiction since all the respondents are not within the purview of this High Court of Madras. The respondents submitted that the petitioner resigned from CRPF on domestic reasons and later joined in BHEL. It was rejected by the competent authority due to non-compliance of terms and conditions. As per norms, the petitioner quit his service on the ground of domestic problem and thereafter, joined his new post as Sub Inspector in BHEL. To get proper NOC prior to his resignation, he applied for NOC but the same was rejected by the



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competent authority as he had not applied for equal post and moreover the BHEL job is having lower scale of pay. In this regard, as per G.I.C.S.(Department of Pers.) OM No.8/7/69-Estt(C), dated 01.11.1970 and 12 (2-a) of G.I.M.H.A. OM No.14/68/60-Estt(D), dated 08.01.1962, 14/01/69-Estt(D), dated 29.07.1970 and 14024/7/79-Estt(D), dated 19.12.1979 incorporated in para 10 and 12 (2-a) of Chapter 45 (Forwarding of Applications for other Employment) of Swamy's Complete Manual on Establishment and Administration and other existing instructions, “an employee could be given NOC only for the post higher than the one he is holding under Government. In case of doubt as to whether the post which employee intends to register his name is higher than the one is holding under Government, the decision of Head of Office/Department shall be final.” The petitioner has not joined in an equal post without proper NOC. Hence, the question is raised whether to count his previous service of the CISF and CRPF for the pension and refund the training charges recovered from the petitioner is as per Rule. Therefore, the petitioner is not entitled to his claim. On his resignation, he has been paid the following final payments:



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- i) leave encashments – Rs.21,280/-
- ii) CGEGIS - Rs.708/-
- iii) Risk Fund - Rs.6,420/-
- iv) DCPS - final payment documents received from the individual in Group Centre was incomplete. Hence, the same was returned to his home address for completion, vide letter, dated 03.08.2014. On receipt of the same it will be forwarded to PAO, CRPF, and New Delhi for payment action and the petitioner is not entitled to any of the relief.

Therefore, the respondents submitted that the petitioner is not entitled any relief and prayed to dismiss the writ petition.

6. Heard Mr.K.Vadivelu, learned Counsel appearing for the petitioner and Mr.C.Nandagopal, learned Counsel appearing for the respondents and perused the records.

7. The contention of the respondents is that there is no jurisdiction since all the respondents are not within the purview of this High Court of Madras. The fourth and fifth respondents are stationed at Uttar Pradesh and the sixth and



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seventh respondents are at Ranchi and Jammu Kashmir respectively. The said contention was denied by the petitioner stating that all the orders are served on the petitioner, while he was working in BHEL, Trichy and some of the orders were served to native place at Salem and the cause of action arose in Trichy and therefore, this Court is having jurisdiction. This Court is convinced of this reason and therefore, this Court is of the considered opinion that the petition is maintainable.

8. As per Rule 16 of CRPF, the post shall be enrolled for a period of three years and during this period of engagement, the employee shall be liable to discharge at any time on one month notice and at the end of this period those who have not given substantive status shall be considered for quasi permanency and those not declared quasi permanent shall be continued as temporary unless they claim disparity of three months notice. Under Rule 17 any principle of force at any time before he has completed three months service or after completion of full period of service shall claim discharge. Rule 17 A deals with recoveries of



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resignation and discharge and Rule 26 Sub Clause 2 of CCS Rules deals with forfeiture of service on resignation.

9. The contention of the petitioner is that he was serving in CISF from 02.09.2006 to 13.05.2010. Thereafter, he joined CRPF on 14.05.2010 and was serving until 10.04.2012. Thereafter, he joined BHEL from 16.04.2012 and is still serving in BHEL. The petitioner is seeking to calculate his service rendered in CISF and CRPF for the period from 02.09.2006 to 10.04.2012. The petitioner joined the CRPF after getting technical resignation from CISF and there is no dispute between the parties for the said resignation is “Technical”. After service in CRPF, the petitioner intended to join BHEL service and submitted permission letter seeking NOC to appear in BHEL security force on 12.01.2012. The petitioner was constantly seeking permission. Since the same was not acted upon, again on 09.03.2012, the petitioner submitted a request letter for NOC to join in BHEL service. From these letters, it would be evident that the petitioner was intended to join BHEL establishment, applying for technical resignation, since the



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respondents were not responding to the letters, the petitioner approached the respondents in person and requested to issue No Objection Certificate. However, the respondents directed the petitioner that since he has not completed three years service in CRPF, he was forced to give resignation by stating domestic problems otherwise, he would lose the job in BHEL. Under such pressurized circumstances, the petitioner has quoted that he is resigning from his job based on domestic problems. Therefore, this Court is convinced that because of delay in granting permission by the respondents the petitioner has stated the domestic reason for his resignation, therefore this Court is of the considered opinion that the resignation is only technical, hence the resignation will not forfeiture of service and the petitioner is entitled to the consequential relief.

10. The next contention raised by the respondents are that the petitioner has opted for a job in BHEL which is not equal or higher than the rank which the petitioner was holding in the CRPF service. The contention of the respondents that under Rule 12(2-a) the employee would be entitled to “No Objection



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Certificate” only if he registers for a higher post seems to be very impractical. If a person is choosing a job which is less tension or which is not as tough as CRPF job, it is his prerogative right. The respondents cannot impose condition that he should take up a job, above the rank he was holding. Therefore, the contention of the respondents that he has taken up a job below the rank of the job he was holding in CRPF is erroneous and non-implementable. This Court has held in some cases that the same cannot be cited as reason for declining to grant NOC and in W.P.(MD) No. 1702 of 2014 it has been held that the respondents contention is erroneous and not sustainable.

11. The contention of the respondents are that the petitioner has not completed 10 years of service and hence he is not entitled to the terminal benefits including pension. The respondents also submitted since the petitioner’s resignation is not “technical resignation”, moreover the petitioner has joined a lower cadre / lower salary in the subsequent job, the petitioner is not entitled to pro rata pension. Since this Court has already held supra that the petitioner’s



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resignation is only technical, the respondent's plea is rejected. As well as plea of opting for lower cadre is also rejected as stated supra. In such circumstances the denial of pro rata pension by the respondents by citing the above reasons is not sustainable in law. As far as the 10 years of service is concerned there is an amendment to the rule wherein the Government of India had issued a notification on 28.12.2002, thereby, the Central Civil Service Pension Rules, 1972, was sought to be amended. After Sub Rule 11 in Rule 37 A was sought to be amended and inserted as under:

*"No.4/61/99-P&PW(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Pension and Pensioners' Welfare)*

New Delhi, December 28, 2002.

NOTIFICATION

S.O 4000- In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Pension) Rules, 1972, namely:-

1.(1)These rules may be called the Central Civil Services (Pension) Amendment Rules, 2002.



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(2) They shall Come in to force on the date of their publication in the Official Gazette.

2. In the Central Civil Services (Pension) Rules, 1972, in rule 37 A. (a) after sub rule (8), the following explanation shall be inserted, namely:-

“EXPLANATION: The amount of pension/family pension of the absorbed employee on superannuation from public sector undertaking/autonomous body shall be calculated in the same way as would be the case with a Central Government servant, retiring on superannuation, on the same day”:

(b) after sub-rule (11), the following shall be inserted, namely:-

*“(11 A) A permanent Government servant absorbed in a public sector undertaking/autonomous body or a temporary/quasi permanent Government servant who has been confirmed in the public sector undertaking/autonomous body subsequent to his absorption therein, **shall be eligible to seek voluntary retirement after completing 10 years of qualifying service with the Government and the autonomous body/public sector undertaking taken together, and he/she shall be eligible for prorata pensionary benefits on the basis of combined qualifying service**”:*

(c) in sub-rule (24) in clause (c), for the word “review” the word “confirmation” shall be substituted.

(Sujit Datta) Director (PW)”

12. The said amendment categorically states that the employee is entitled to calculate both the government service and other service and entitled to pro rata pension. Therefore, the respondents erred in denying the pro rata pension, when the petitioner had tendered technical resignation. The petitioner counsel



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submitted that the petitioner is still in the BHEL service and has not attained superannuation. Therefore, this Court is of the considered view that the petitioner had joined the BHEL service in the 2012 and has put in more that 10 years service in BHEL. Now the petitioner is entitled to add the 5 years service from CISF and CRPF with that of the BHEL service, where the petitioner is serving for more than 10 years and entitled to pension on pro rata basis as per the amendment.

13. The petitioner is seeking the refund of Rs.1,74,048/- the said amount was paid by the petitioner because he had resigned from CRPF service before completing 3 years of service in CRPF. It is seen from the records that the petitioner had completed 23 months bur the petitioner ought to have served 36 months for completing three years. Therefore this Court is of the considered opinion that the petitioner had completed more than half of 36 months and hence the petitioner is entitled to refund of half of the amount i.e. Rs. 87,024/-.

14. For the reasons stated above the following order is passed:



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- a. The respondents are directed to accept the resignation as “technical resignation”
- b. The respondents are directed to pass orders for pro rata pension / gratuity by taking the five years service of the CISF and CRPF service.
- c. The petitioner is entitled to add the said five years service along with the BHEL service and entitled to pro rata pension.
- d. The respondents are directed to pay Rs. 87,024/- within a period of six weeks from the date of receipt of the copy of the order.

15. The writ petition is disposed on the above terms and No costs and consequently all the miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

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S.SRIMATHY, J

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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