



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: July 08, 2022**

Pronounced on: July 25, 2022

+ **W.P.(C) 7382/2012**

SURENDER SINGH HOODA Petitioner

Through: In person with Mr. Narender Hooda,
Senior Advocate with Mr. Ishan Jain,
Advocate

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Apoorv Kurup, CGSC with
Mr. Ojaswa Pathak, Ms. Nidhi Mittal
& Ms. Aparna Arun, Advocates for
R-1/UIO
Mr. Hemendra Singh, Deputy
Commandant (Law) BSF for
respondents

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SURESH KUMAR KAIT, J

1. The petitioner claims to have joined services of Border Security Force (BSF) in the rank of Assistant Commandant on 10.12.1991. He was serving as Second in Command as on 16.09.2006, with Department of Personnel and Training (DoPT), Ministry of Personnel, Public Grievances and Pensions,

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sought nominations from Government department's Class-I Officers, having minimum 07 years of service and below 50 years of age for the post of fourth Post Graduate Diploma in Public Policy and Management (PGDPPM) at MDI, Gurgaon for the academic year 2009-11. In pursuance to the aforesaid, BSF called for nominations from its establishments and; petitioner claims to have applied for it through proper channel; was selected for PGDPPM to be conducted at Management Development Institute (MDI), Gurgaon w.e.f. 07.12.2009, furnished requisite bond and the PGDPPM commenced on 16.12.2009.

2. According to petitioner, subsequent upon joining the PGDPPM, he and other participants were informed that the venue of international module was shifted from George Mason University, USA to Sciences PO University, Paris by MDI, Gurgaon with the approval of DoPT, which was objected to by the petitioner vide protest letter dated 19.10.2010, as in the advertisement as well as the bond, it was specifically mentioned that the international module will be held at George Mason University, USA. The petitioner further claims to have completed his training at MDI, Gurgaon and international module of six weeks duration at Science PO University, Paris; and he reported back to his work on 01.01.2011. Petitioner claims to



have been supposedly granted nine months at his work place for completing his dissertation, however, he got posted in the extremely hard area of Gurez Sector in Bindapur district of Jammu and Kashmir. Petitioner further claims that his telephonic request for his posting at BSF, Headquarters, Delhi or some other establishment of BSF for nine months to enable him to complete his dissertation to successfully complete his PGDPPM, was declined by IG, Training. Thereafter, petitioner claims to have applied for voluntary retirement due to domestic reasons.

3. Petitioner claims to have made a representation dated 19.12.2011 to the then Hon'ble Home Minister for waiving off his liabilities of bond furnished at the time of joining PGDPPM, as he was not granted time for writing his dissertation due to hard posting and also because the conditions to complete the course were changed due to change in venue of international module without any prior intimation. However, he was telephonically informed by the Commandant (Pers) that his case for voluntary retirement will be processed only if he furnishes undertaking for deducting the dues arising out of bond from his terminal benefits and so, he furnished undertaking dated 23.07.2012 in the requisite format. Thereafter, an office Order dated 07.09.2012 was issued by the Ministry of Home Affairs



accepting petitioner's request for voluntary retirement w.e.f. 31.07.2012, however, it was directed that the whole expenditure incurred on him for undergoing PGDPPM with interest, barring the period he was not offered opportunity for completing his dissertation, be recovered from his due entitlements.

4. Petitioner also claims to have written a letter dated 20.10.2012 to the Director General, BSF for release of his admissible benefits. However, in terms of impugned order dated 07.09.2012, his pensionary benefits have been withheld for recovery of expenditure incurred on petitioner for undergoing PGDPPM at Management Development Institute, Gurgaon.

5. In the aforesaid background of facts asserted by the petitioner, the present petition has been filed seeking a direction to respondent No.3 in the nature of mandamus to release his retiral benefits without any deduction in terms of impugned order/letter dated 07.09.2012. In addition, quashing of impugned order/letter dated 22/25/2012/Pers/BSF/57976-58022 dated 07.09.2012 itself is also sought.

6. During the course of arguments, learned senior counsel for petitioner submitted that the petitioner had joined the course primarily for the reasons that the international module of the course was to be held at George Mason



University, USA, however, the same was shifted to Sciences PO University, Paris, whereas as per the advertisement as well as the bond, it had to be George Mason University, USA only. He submitted that PGDPPM was a twenty one month programme, which included one year institutional training at MDI, Gurgaon and the remaining nine months was for completion of dissertation, whereas, the petitioner completed international module of six weeks duration at Science PO University, Paris and thereafter, he had to report back to his work place on 01.01.2011 having been deployed in extremely hard area of Gurez Sector in Bandipur District of Jammu and Kashmir. It is pleaded on behalf of petitioner that respondent No.3 was supposed to provide period of nine months to petitioner for completing the dissertation, however, he was given charge of Commandant in an extremely hard area and even his request for posting at BSF headquarters to enable him to complete his dissertation was declined by the IG Training. It was empathetically submitted by learned senior counsel that instead of posting the petitioner at a suitable place to enable him to complete his dissertation, he was posted in extremely hard area, requiring round the clock duty with utmost responsibility. Even his requests to the IG, Training and the then Hon'ble Home Minister of India were not considered and therefore, the,



respondents are solely responsible for not allowing the petitioner to complete his dissertation and diploma; and wastage of precious one year of petitioner's career. Learned senior counsel submitted that besides petitioner, other officer from BSF, namely, Shri Y.D. Vashisht, Commandant, was also not able to complete the dissertation and diploma due to non-availability of time.

7. Learned senior counsel next submitted that petitioner's application for voluntary retirement was accepted and he was relieved from service on 13.09.2012 (afternoon), however, his retiral dues were not released despite his letter dated 20.12.2012. Even vide order dated 19.03.2013, this Court had directed the respondents to release the terminal benefits of petitioner within two weeks, however, in violation thereof, the respondents released Rs.20,66,214.00 on 06.06.2014 and other terminal benefits of Rs.63,012/- on 21.01.2014; Rs.36,796/- on 25.04.2013 and Rs.420/- on 06.05.2013, causing huge loss to the petitioner in respect of utilisation of said terminal benefits. It was submitted that though the pension of petitioner has also been restored in April, 2014, but the respondents had no right to recover the bond amount, especially when no such demand was raised by the respondents. Further submitted that the retiral dues to the tune of Rs.39,02,427/- were lying with



the respondents which were released belatedly, still interest amount to the tune of Rs. 3,20,303/- has been charged. Thus, it was submitted by learned senior counsel for the petitioner that for the own lapse of respondents for not letting petitioner complete his PGDPPM, recovery of expenditure incurred on his undergoing PGDPPM at Management Development Institute, Gurgaon, is bad in law. Reliance was placed upon Supreme Court's decision in *Gorakpur University Vs. Shitla Prasad Nagendra* (2001) 6 SCC 591 has awarded 18% interest for withholding and delayed payment on terminal benefits.

8. To the contrary, the present petition was strongly opposed by learned Central Government Standing Counsel (CGSC) appearing on behalf of the respondent on the ground that the recoveries made from the petitioner are as per rules, which do not call for any interference by this Court.

9. Learned CGSC submitted that for the PGDPPM at MDI Gurgaon, the officers were nominated subject to certain terms and conditions, which specified that it was a residential programme; included international module of six weeks and in the second year, the officers would return to their departments but continue to work on dissertation in consultation with the assigned faculty. For the entire period of course, the officers were treated on



duty and their pay and allowances as well as travelling expenses to Gurgaon and back were borne by the Department/Ministry/State Government for which they were deputed. Also, lodging expenses were borne by the sponsoring organization and that the DoPT bore all expenses for travel to USA and back. It was submitted by learned CGSC that in lieu of above, the officers were required to execute a bond that in the event of officers failing to resume duty, resigning or retiring, or quitting the service anytime within five years from return to the duties, the officers shall pay the entire amount with interest thereon to the authorities concerned. Learned CGSC submitted that petitioner had submitted his willingness and bond for the aforesaid course.

10. Learned CGSC submitted that the final choice of international institution was joint by DoPT and MDI, Gurgaon and shifting of venue of the course was an administrative decision and that the petitioner interfered by sending a direct mail to George Mason University, USA on his own for arranging a visit of participants without knowledge of MDI, Gurgaon, due to which he was issued a warning letter dated 19.06.2011. Further submitted that the petitioner had to complete his dissertation in 09 months while being at his work place, however, he failed to do so. It was urged that no request



citing difficulty in completing the dissertation or extension of time was made by the petitioner to the respondent and in the terms and conditions, it was nowhere specified that suitable posting was necessarily to be provided by the respondents to enable the participants to complete their dissertation.

11. Learned CGSC also brought to the notice of this Court that prior to making a representation dated 19.12.2011 to the Hon'ble Home Minister for waiving off his liabilities of bond furnished at the time of joining PGDPPM, the petitioner had made a representation dated 25.02.2011 before the Director General, BSF, which was examined and rejected being devoid of merit. The petitioner had thereafter filed an application dated 09.07.2012 seeking voluntary retirement on the ground that he had compelling circumstances at his home.

12. Thereafter, his representation dated 19.12.2011 to the Hon'ble Home Minister was decided vide letter dated 07.09.2012 whereunder petitioner's request for voluntary retirement was accepted, however, it was directed that the whole expenditure incurred on him for undergoing diploma such as pay and allowances; leave salary; cost of fee, travelling and other expenses, cost of international travel and cost of training abroad met by the department; together with interest, barring the period for which he was not offered the



opportunity for completing his dissertation, was directed to be recovered from his due entitlements. The petitioner stood relieved from service on 13.09.2012 (afternoon).

13. Learned CGSC for respondent also submitted that petitioner had filed representation for voluntary retirement on 10.12.2011 citing family reasons and prayed for acceptance of his voluntary retirement w.e.f. 31.07.2012. Petitioner also sent a reminder dated 27.06.2012 seeking expedition of his voluntary retirement and gave an undertaking that all dues arising out of liabilities furnished under the bond at the time of undergoing the subject course, be deducted from his retiral dues.

14. According to respondents, in terms of letter dated 07.09.2012, the whole expenditure incurred on petitioner for undergoing PGDPPM including pay and allowances, leave salary, travelling expenses both domestic and international etc., barring dissertation period, has to be recovered from his entitlements and so, from the proposed recoveries arising out of bond dated 27.11.2009, the period of dissertation was barred. Further submitted that the petitioner had made various representations only for the waiver of liability, however, no request for extension of time to submit dissertation or for his posting to any other place where he could devote his



time on dissertation, was made. It is urged that the petitioner was infact never willing to complete his dissertation but was willing to take voluntary retirement to pursue the legal profession. Thus, dismissal of the present petition is sought by the respondents.

15. In rebuttal, learned senior counsel for petitioner submitted that petitioner was not allowed to complete his dissertation and for this reason he could not complete his diploma and for the fault of respondents, petitioner cannot be held liable and, therefore, impugned recoveries are bad in law. Further, submitted that the respondent in the impugned order has admitted that the petitioner was not offered opportunity to complete his dissertation. Accordingly, the respondent instead of exempting from the liabilities of the bond with regard to dissertation period, has issued order no. 16/civil/Trg/4th PGMDI/II/BSF113491-94 dated 21.11.2012 for recovery of full amount. Also, the respondents have included the amount of Rs. 90,5621- as cost of accommodation at MDI Gurgaon; have not deducted the income tax paid by the petitioner on the salary drawn by him during the period of one year and also levied interest @ 10% p.a. in gross violation of terms and conditions of the bond, whereas the respondents could only recover the interest from the date of demand as per the terms and conditions of the bond. Hence, it is



urged that the present petition be allowed and respondent No.3 be directed to release the complete retiral benefits along with interest, without making any deductions under the bond furnished by the petitioner.

16. The arguments advanced by both the sides were heard and have been considered in the light of material placed before this Court.

17. The petitioner had applied and was selected to undergo Post Graduate Diploma in Public Policy and Management at MDI, Gurgaon for the academic year 2009-11 from George Mason University, USA for a period of one year and nine months and had submitted the requisite bond dated 28.11.2009; accepting the terms and conditions implied therefor. However, the venue of international module got shifted to Sciences PO University, Paris, which was resisted to by the petitioner vide letter dated 19.10.2010, however, the same is an administrative decision and nothing had stopped the petitioner to deny to undergo the course/ training if at all he was totally unwilling to join it from a university of Paris.

18. We have gone through the document/letter dated 21.02.2011 written by MDI, Gurgaon to the DG, Training BSF informing that the petitioner had contacted with the George Mason University, USA to visit along with the participants, directly/ bypassing the procedure, for which an Explanation



vide letter dated 08.03.2011 was sought from the petitioner. The petitioner in his explanation had admitted having communicated the George Mason University, USA and was therefore, warned not resort to any unauthorized communication. The courses or diplomas for higher education under renowned universities are provided to the eligible officers of the force to enhance their skills and personality for their benefit as well as that of the organization. The conduct of the petitioner to over reach the George Mason University, USA has been highly deprecated by the BSF.

19. The petitioner had joined the course on 16.12.2009 and completed the training at MDI, Gurgaon and international module of six weeks duration at Science PO University, Paris and thereby, completed one year. It is not disputed by the petitioner that the fee of the course, including the cost of international travel and domestic travel, pay and allowances during the training period, residential accommodation and other allowance in connection thereto, were borne by the DoPT; respective cadre of controlling authority in the Government of India; the sponsoring organization. In terms of bond furnished by the petitioner, in the event of failure on the part of official to complete the course or leave the programme or quitting the service, the sum together with the interest has to be paid by the official to



the Government. As per the advertisement and terms and conditions stipulated for the programme, the petitioner was supposed to complete his dissertation from the place of work within a period of next nine months. However, the petitioner did not complete the dissertation. The petitioner has pleaded that he got posted in the extremely hard area of Gurez Sector in Bindapur district of Jammu and Kashmir, requiring round the clock duty with utmost responsibility and therefore, could not complete dissertation within nine months. It cannot be lost sight of the fact that being a Commandant and having been posted on a tough posting, the petitioner rightly would not have got time to complete the dissertation; but again petitioner has not placed on record any document / communication to show his *bona fide* that he had requested the authorities to place him at a soft posting where he could complete his dissertation. Petitioner's plea that it was the duty of BSF officials to provide him free time of 09 months for devoting time to complete dissertation, does not appeal to this Court as it was made clear in terms of the conditions of the bond that the officials shall complete dissertation at their work place.

20. This Court has also gone through the copies of communication/ representation made by the petitioner to the authorities concerned but the



only plea raised therein is to waive off the liabilities of bond, and nowhere on record request is made to transfer him at a suitable place or to grant further time to complete the dissertation. One of his representation dated 19.12.2011 was to the then Hon'ble Home Minister wherein the petitioner had raised objections in Paras-(aa) and (bb) with regard to change of venue of the course and providing of visa for US. Additionally, the petitioner has also raised objection with regard to the contents of the course calling it routine management subjects and relevant only to policy making and functioning of Government departments and not of any help or benefit of the BSF. It seems the petitioner had joined the 'Post Graduate Course in Public Policy and Management' with the intention to have exposure to a University in USA and first, he lost the interest due to change of venue from USA to Paris and thereafter, the contents of the course did not appeal him and thereby, he turned indifferent to complete the dissertation.

21. Moreover, in the afore-said representation dated 19.12.2011 the petitioner has also contended that he is willing to join legal profession, which is his passion; and in another representation/ communication dated 28.06.2012, the petitioner has sought voluntary retirement citing personal reasons and requirement of his presence with his family. This further shows



that the petitioner had lost interest in his job and was willing to quit his official responsibilities at the earliest and in haste, vide communication dated 27.06.2012, petitioner even undertook to pay off the outstanding dues towards the subject course, barring the period he could not complete his dissertation.

22. The aforesaid representation dated 19.12.2011 was decided by the Ministry of Home Affairs vide communication dated 07.09.2012 while holding as under:-

“2. Shri Surinder Singh Hooda, Commandant will thus retire w.e.f. 31.07.2012 or from the date of his release, whichever later. The officer would be entitled to pension and other benefits as admissible under Rule-49 of CCS (Pension) Rules, 1972.

3. Outstanding dues, if any as well as all charges and expenses i.e. whole expenditure incurred on him for undergoing Post Graduate Programme in Public Policy and Management (PGPPM) at Management Development Institute, Gurgaon or expended on his account during training such as pay of international travel and cost of training abroad met by the government/agency concerned together with the interest barring the period for which he was not offered the opportunity for completing his “Dissertation” may be recovered from his due entitlements”.

23. In our considered opinion, we find force in the stand taken by the



respondents that *“A candidate who avails of study leave but takes no interest to complete the course is and doesn't furnish the completion certificate to that effect is doing a disservice to the organization”* and, therefore, we are not convinced with the plea of the petitioner that due to hard posting he could not complete his dissertation in view of the fact that despite being a person of prudent knowledge and holding an imperative designation, he did not write even once for extension of time to write the dissertation, whereas he had all the time to un-authoritatively communicate with the University of USA on travel and visa issues, which is purely an administrative decision. It was neither submitted by learned counsel for petitioner during the course of arguments nor pleaded in the petition, that there was no provision for extension of time to conclude the dissertation. On the other hand, respondents have pleaded that no request/communication was made by the petitioner seeking extension of time. Hence, the petitioner cannot be absolved of his liability to pay the Government all charges and expenses, which were incurred on account of his training such as pay and allowances, leave salary, cost of fee of travelling and other expenses, cost of international travel and cost of training abroad etc., as per rules.

24. On this aspect, reliance placed by petitioner's counsel upon decision



in *Gorakhpur University (Supra)* is of no help to the case of petitioner, being distinguishable on facts. In the said case, the authorities had withheld the retiral benefits of the petitioner therein towards recovery of amounts due for overstay in official accommodation, however, accepted the normal rent without raising demand for penal rent; the demand of penal interest was raised after one year of vacating the accommodation and that too on the basis of certain subsequent orders increasing the penal rate of interest. In such circumstances, the Hon'ble Supreme Court upheld the decision of High Court for payment of PF and gratuity with interest @18%. Whereas in the present case, the petitioner was fully aware of the terms and conditions of joining the course/ training, which were duly mentioned in the advertisement, circular as well as the bond and he had full knowledge of the fact that in case of his failure to complete the course or leaving the job within five years of completion of course, he will have to face the consequences.

25. On the count what is due and payable by the petitioner, we find that the petitioner had joined the subject course in the year 2009 and proceeded on voluntary retirement on 13.09.2012. In terms of communication dated 21.11.2012 written by Ministry of Home Affairs to the Director, BSF;



deduction of Rs.,15,01,089/- with interest @10% per annum (Rs.3,.20,203/-) has to be made from the retiral dues of petitioner. The aforesaid communication dated 21.11.2012 reads as under:-

“3. XXXXX

The total expenditure incurred on account of subject training programme by BSF, BPR&D and DoPT is as per Appendix “A” to this letter and following details:-

(a) <u>Paid by BSF</u>	
(i) Pay (From 16 Jan 2009 to 15 Dec 2010)	Rs.2,19,376
(ii) TA (From 16 Dec 2009 to 15 Dec 2010)	Rs.78, 478/-
(iii) Cost of travel from MDI Gurgaon to 27Bn BSF	Rs.1,597/-
 (b) <u>Cost of Domestic Component of the programme</u>	
<u>Paid by BPR & D</u>	
Rs.2,87,500/-	
 (c) <u>Paid by DoPT</u>	
(i) Cost of international components of the Programme paid by DoPT (US \$ 2300 X Rs.46.80 (exchange rate on 16.7.2020+1,07,640/-	Rs.1,07,640/-
(ii) Per diem and lodging charged during International component of the programme US \$ 4113, i.e. 4113xR.44.356 (exchange rate on 19.10.2010 = Rs.1,82,436/-	Rs.1,82,436/-
(iii) Air Fare for International component of the Programme	Rs.33,500/-
Grand Total	Rs.15,01,089
Total recovery to be made = Rs.15,01,089 + interest @10% per annum	

26. This Court does not dispute the various heads shown in the

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communication dated 21.11.2012 above and find that for the purpose of calculation of pay and TA, the period considered is from 16.01.2009 till 15.12.2010; the petitioner had joined the PGDPPM at MDI, Gurgaon on 16.12.2009 and had reported to his work place on 01.01.2011; and so, the period thereafter has rightly not been taken into consideration. However, on recovery of interest component @10%, we find that the total retiral dues of the petitioner were pending with the respondents; and only after the present petition came up for hearing for the first time on 27.11.2012 and pursuant to direction of this Court vide order dated 19.03.2013; that the respondents released a sum of Rs.20,66,214.00 on 06.06.2014 and other terminal benefits of Rs.63,012/- on 21.01.2014; Rs.36,796/- on 25.04.2013 and Rs.420/- on 06.05.2013. Even petitioner's pension has been restored only on 06.05.2013. Thereby, petitioner has received his retiral benefits in piece-meal and has suffered loss of interest. Moreover, the expenses incurred by the respondents on the training programme were fixed and onetime expenses, without continuous loss of interest and no prejudice would be caused to the respondents if only the total expenditure incurred on the training of petitioner is paid by the petitioner.

27. In view of the aforesaid, the impugned order / letter dated 22/25/2012/



Pers/BSF/57976-58022 dated 07.09.2012 is partly allowed to the extent that the respondents are entitled to recover from petitioner only fixed expenses of Rs.15,01,089/- towards the total expenditure incurred on training programme but not entitled to recover interest for the reasons mentioned in Para-26 above. Accordingly, the respondents are directed to refund the interest component with interest @7.5% p.a. in favour of the petitioner within four weeks from today.

28. With directions as aforesaid, the present petition is partly allowed and accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

JULY 25, 2022

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