

86.
16.5.2023
S.D.

W.P.A. 2293 of 2023

**Shyam Sundar Das
Vs.
The Union of India & Ors.**

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
Mr. Soumik Dey

... For the Petitioner

Mr. Bipul Kumar Mondal

..For the U.O.I.

Exception handed over in Court today is retained with the records.

The petitioner was working as a Constable with the Railway Protection Force (RPF). He has retired from service in 2009. From the Pension Payment Order (PPO) issued on August 31, 2009, it appears that a period of 9 years, 6 months and 13 days have been excluded from the petitioner's length of service.

Mr. Chattopadhyay, learned counsel appearing on behalf of the petitioner submits that the petitioner's length of service should have been 38 years, 2 months and 4 days.

Criminal proceedings which were initiated under Sections 304/114 of the IPC have not been proved against the petitioner. The Additional Sessions Judge, Durgapur, by an order dated April 29, 2010 acquitted the petitioner. The petitioner brought the said order of acquittal to the notice of the disciplinary authority. By an order dated May 15, 2013, the Assistant Security Commissioner (RPF)/the disciplinary authority held that an order of acquittal in the criminal proceedings does not quash the order passed in disciplinary proceedings.

The said order of the disciplinary authority was challenged by way of a statutory appeal on July 8, 2013. It is the petitioner's case that no decision was taken in the statutory appeal and without the statutory appeal being disposed of, length of service of the petitioner could not be shortened by more than 9 years.

Mr. Mondal, learned counsel appears in favour of the Union of India.

It is the stand of the RPF that the appeal dated July 8, 2013 was disposed of by an order dated October 17, 2016 after more than 3 years from the date of filing of the appeal.

Considering the submissions made on behalf of the parties and the materials placed on record, this Court finds

that the respondent authorities are unaware whether or not the order passed by the appellate authority was served on the petitioner. It is admitted that acknowledgement due card from the postal department was not received by the respondent authorities. On an enquiry made on behalf of the respondents to the Department of Post, India, the senior Post Master, Asansol replied that no record of the article in question was available in the system or in the manual records because the preservation of record is made only for a prior period of 18 months. Since no records can be shown as to the delivery of the order dated October 17, 2016 to the petitioner, this Court is of the view that the petitioner may not have been served by the order of the appellate authority. Therefore, the petitioner's right to prefer a review from the same may also have been prejudiced.

The respondent authorities were under an obligation to serve the said order of the Appellate Authority under the Railway Protection Force (RPF) Rules, 1987.

Since the respondent authorities have failed to perform their part of the obligation, the order dated October 17, 2016 is hereby set aside and/or quashed.

In the event, the petitioner chooses to file an appeal within three weeks from date, the respondent authorities

concerned, will consider the said appeal within three months of filing of the said appeal without raising the issue of limitation. The appeal be disposed of by passing a reasoned order upon the petitioner being personally represented and/or through his representative and also in terms of the 1987 Rules. The reasoned order shall be communicated within two weeks of passing thereof.

With the directions aforesaid, **W.P.A. 2293 of 2023** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)