Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPA 18372 of 2008

Biswanath Chowdhury
Vs.
Union of India & Ors.

For the petitioner	:	Mr. K.B.S.Mahapatra
For the Union of India	:	Mr. Hemonto Coomar Mitter
For the respondent nos. 2 to 7	:	Mr. Indrajit Dasgupta Ms. Pushpita Bhowmick
Heard on	:	05.12.2023
Judgment on	:	05.12.2023

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, *inter alia,* praying for quashing of the order dated 26th December, 2003, whereby, the Inspector General as the Revising Authority, on the basis of a disciplinary proceeding initiated against the petitioner, had, *inter alia,* imposed a penalty of reduction of pay of the petitioner to the lowest stage of Rs. 3050/- for the time scale of pay of Rs.3050-75-3950-80-4950/- for a period of three years.

2. Records reveal that the petitioner, at material point of time was employed in the Central Industrial Security Force (In short, the "CISF") unit, New Jalpaiguri. Since the petitioner overstayed his

leave, a charge sheet dated 7th June 1999 was issued. A regular enquiry was conducted against the petitioner. On the basis of the aforesaid enquiry, the Commandant by a final order dated 14th February 2000 had awarded penalty of compulsory retirement.

3. Being aggrieved the petitioner had preferred a statutory appeal. The same was, however, dismissed by the Appellate Authority by an order dated 11/12th August 2000. Challenging the aforesaid dismissal, the petitioner had filed a writ petition before this Court which was registered as WP no. 21209 (W) of 2000. On contest, by order dated 25th July 2003, a Coordinate Bench of this Court while setting aside the order of punishment and while directing the respondents to reinstate the petitioner by granting 50 per cent backwages to him, also granted leave to the revising authority of the petitioner to take a decision as regards any other mode of punishment which is short of compulsory retirement. The petitioner was also granted liberty to make a representation.

4. Following the aforesaid, the Inspector General, as the revising authority by order dated 26th December 2003 was, inter alia, pleased to impose the following penalty:-

> *" I have examined the petition, and other records, on the subject and in view of the judgement order dated 25.07.2003 of Hon'ble High Court Calcutta I award the punishment of "Reduction of pay to the lowest stage of Rs.3050/- in the time scale of pay of Rs.3050-75-3950-4590 for a period of three years. It is further ordered that he will earn increment during the period of reduction and*

> *that on expiry of this period, the reduction will not have the effect of postponing his future increments of pay."*

5. At the same time, the revising authority also proposed that the intervening period from the date of compulsory retirement to the date of reinstatement in service be treated as *dies-non*. However, while proposing as such, he granted the petitioner an opportunity to submit a representation.
6. In course of hearing of the instant writ petition since, it was submitted on behalf of the respondents that the petitioner had retired from service and subsequent to his retirement the respondents have disbursed the retiral benefits in favour of the petitioner whereupon the petitioner is enjoying regular pension and further that the order of punishment inflicted on the petitioner by order dated 26th December, 2003 does not in any manner effect the pensionary benefits, Mr. Mahapatra, learned advocate appearing for the petitioner on consideration thereof, submitted that his client is only interested to receive his rightful entitlement arising out of his retirement. Mr. Mahapatra further submitted that in the event, the retiral benefits are not effected on account of reduction of his pay by order dated 26th December 2003, the petitioner is ready and willing to forgo the challenge made in the writ petition.
7. Since then, the respondents have filed a supplementary affidavit disclosing therein the order dated 3rd March 2004, wherefrom it appears that the proposal for treating the aforesaid period as "*dies-*

non" was considered upon receipt of the petitioner's representation and on the basis thereof, it was ordered that the intervening period from the date of compulsory retirement to the date of reinstatement i.e. from 16th February 2000 to 14th October 2003 be considered as "*dies-non"* and will be on record.

8. Subsequently, however, by amended order dated 1st September, 2004, the aforesaid direction was modified so as to record that the petitioner be treated as *"Non duty"* instead of "*dies-non"* which shall remain on record. By relying on the aforesaid, Mr. Dasgupta, learned advocate appearing for the respondent nos. 2 to 7 submits that the pensionary benefits of the petitioner are not affected at all. Since then, a further supplementary affidavit has been filed on behalf of the respondents affirmed on 17th May 2003 disclosing therein, computation of post-retiral benefits so as to suggest that the punishment inflicted on the petitioner did not have the effect of reducing his post-retiral benefits.

9. Today the service records to the petitioner have been produced. Mr. Dasgupta, by placing reliance on Form-7 submits that although, under the head "length of qualifying service", the period of 3 years 3 months and 12 days had been noted as *dies-non,* however, such recording does not affect the final entitlement of the petitioner. According to him, although, while computing the qualifying service of the petitioner, the respondents have excluded non-qualifying service of 4 years 6 months and 10 days which, inter alia, includes

the aforesaid period of 3 years 3 months and 12 days, however, despite the above, the entitlement of the petitioner to receive pension works out to 34 years 2 months and 10 days. Since, the maximum pensionable service is restricted to 33 years, the petitioner is not effected by the aforesaid recording and that the same does not interfere with the petitioner's entitlement. Mr. Dasgupta, however, candidly submits that when the aforesaid Form-7 was prepared, the authorities had proceeded on the basis of the order dated 3rd March 2004 and had not taken into consideration the order dated 1st September, 2004.

10. Mr. Mahapatra, however, submits that by reasons of exclusion of the period of 3 years, 3 months and 12 days from his qualifying service, the retiral benefits payable to the petitioner has been reduced. The aforesaid recording is illegal, the respondents should be directed to correct the same and on the basis thereof, by recomputing the retiral benefits, the difference should be disbursed in favour of the petitioner.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case, it is noticed that the respondents while preparing the Form-7 for assessing pension/family pension and gratuity in column 17 (vi) had recorded as follows:-

"vi	*Any other period not treated as qualifying service (give details)*	:	*03 YRS 03 MONTHS 12 DAYS (Period from C/R to Re-instaement in service treated as 'Dies-Non' i.e., from 16-2-2k to 24-10-03)"*

12. Based on the aforesaid, the respondents have computed not only pension but also gratuity payable to the petitioner. While computing as such, the aforesaid period of 3 years 3 months and 12 days have been treated as non qualifying service even for the purpose of gratuity. To appropriately appreciate the aforesaid, the relevant computation available in columns 8 and 11 of the Form No. 7 (calculation sheet) are extracted hereinbelow:

"8.	*Length of qualifying service reckoned for pension and Gratuity.*	*38 YEARS 07 MONTHS 20 DAYS (Excluding non-qualifying service – 4 yrs 6 mts 10 days). THUS, HE IS ENTITLED FOR PENSION AND GRATUITY OF 34 YEARS 02 MONTHS 18 DAYS SUBJECT TO MAXIMUM 33 YEARS SERVICE i.e. 66 <u>HALF YEARS</u>.*
11.	*i) Emoluments for Graruity*	*Rs.10090/- + GP : 2400/- = Rs.12490/-* *Rs.12490/- + DA(90%)- 11241/- = Rs.23731/-*
	ii) Retirement/Death Gratuity admissible	*$\frac{\text{Rs.23731/-}}{4}$ X 66 = <u>Rs.391561-50. R/off = 3,91,562/-</u>"*

13. Having regard to the order dated 1st September, 2004 it would clearly appear that the aforesaid Form-7 has been prepared on an erroneous basis. Although, the same ultimately may not prejudice the petitioner insofar as the payment of pensionary benefit is concerned, however, the same may have an impact on the petitioner insofar as payement of gratuity is concerned. In view thereof, I direct the respondents to correct the error by appropriately modifying the Form-7 in relation to column 17(6) and the calculation sheet and to recompute the benefits payable to the petitioner.

14. On the basis of the aforesaid recomputation, if any additional benefit is payable to the petitioner, the same shall be disbursed in

favour of the petitioner within a period of 8 weeks from the date of communication of this judgment and order.

15. With the above observations/directions, the writ petition being WPA 18372 of 2008 is accordingly **disposed of**.

16. There shall be no order as to costs.

17. The original records of the case as produced by Mr. Dasgupta are returned to him.

18. Urgent photostat certified copy of this judgment, if applied for be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)