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

% *Date of Decision: 24<sup>th</sup> March, 2023*

+ **W.P.(C) 3286/2019**

**HIMANSHU BHATT**

..... Petitioner

Through: Mr. Anando Mukherjee and  
Mr. Shwetank Singh, Advocates.

versus

**INDIA RAILWAY CATERING AND TOURISM  
CORPORATION LTD. & ORS.**

..... Respondents

Through: Mr. Rajat Malhotra and  
Ms. Jivika Jolly, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**JUDGEMENT**

**JYOTI SINGH, J. (ORAL)**

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

*“a) Issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof quashing and setting aside the letter/ order bearing No. bearing no. IRCTC/HRDPF/D-482 dated 25.05.2018 issued under the signature of JGM (HRD)-II (Respondent No. 3) whereby and where under the rightful claims of the Petitioner has been rejected and/or declined; and*

*b) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof commanding the Respondent authorities to implement and comply with the directions as contained in the order dated 28.09.2015 passed by the Division bench of this Hon'ble Court in L.P.A No. 881/2013 in true letter and spirit; and*

*c) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof commanding the Respondent authorities to release full 50% backwages including the amount illegally withheld from the Petitioner to the tune of Rs. 49,323/-; and*

*d) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof commanding the Respondent authorities to release an amount of Rs. 10,000/- which has been illegally deducted from the Petitioner's salary as is clear from the salary slip of November, 2016; and*

*e) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof commanding the Respondent*

*authorities to pay full HRA and SPA to the tune of approximately Rs. 3,32,720/- (Rs. 1,24,770/- being HRA and Rs. 2,07,950/- being SPA) as consequential benefit to the Petitioner, which has been illegally and wrongly denied to the Petitioner for the period of his illegal termination along with interest @ 18% p.a.; and*

*f) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof commanding the Respondent authorities to grant HRA and SPA to the tune of approximately Rs. 34,976/- (Rs. 13,116/- being HRA and Rs. 21,860/- being SPA) to the Petitioner for months of October 2015 to January 2016, which has been illegally and without reason withheld from the Petitioner even though the same pertains to a period after the order of reinstatement passed by this Hon'ble Court; and*

*g) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof commanding the Respondent authorities to grant the benefit of arrears of normal annual increments with the benefits of revised pay in basic salary and all corresponding allowances for the period of illegal termination to the date of reinstatement along with interest @ 18% p.a.; and*

*h) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof commanding the Respondent authorities to calculate and pay the arrears of time bound promotion granted to the Petitioner on 01.11.2017 and 09.11.2017 respectively (including arrears of grade increments in basic salary as well as corresponding allowances), from the effective date of notional promotion i.e. 18.03.2013 and 29.06.2016 respectively along with interest @ 18% p.a.; and*

*i) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof commanding the Respondent authorities to decide and settle the claims of the Petitioner as mentioned in his representations/letters dated 08.02.2016 as reiterated vide letters dated 13.04.2017 which is pending for more than three years along with interest @ 18% p.a., in a time bound manner.”*

2. Petitioner was working as Assistant Supervisor (Tourism) on a pay scale of Rs.10000-22900 with the Respondent when he was terminated from service on 21.09.2012. Challenging the order of termination, Petitioner filed a writ petition in this Court being W.P.(C) 5293/2013 on 17.08.2013 seeking quashing of the termination order with back wages and other consequential benefits.

3. The writ petition was dismissed in *limine* on 27.08.2013 and the order was challenged by the Petitioner before the Division Bench in

Signature Not Verified LPA No.881/2013. By order dated 28.09.2015, the Division Bench

allowed the appeal quashing the termination order and directing the Respondents to pay 50% back wages to the Petitioner with all consequential benefits. Liberty was, however, granted to the Respondents to initiate Departmental Inquiry afresh in case they so desired.

4. The order of the Division Bench was challenged by the Respondents before the Supreme Court but the SLP(C) No.34935/2015 was dismissed on 15.01.2016. Petitioner made repeated requests and representations to the Respondents to permit him to join the service. After considerable delay, Petitioner was informed by a communication dated 21.01.2016 that he could join the duties immediately and that he would be entitled to 50% back wages, however, there was no reference to any other consequential benefit, payable in terms of the judgment of the Division Bench.

5. Pursuant to the liberty granted by the Division Bench, Respondents initiated disciplinary proceedings against the Petitioner and issued a charge sheet which was received by the Petitioner on 10.03.2016. Reply was filed to the charge sheet on 29.03.2016. On 14.06.2016, Petitioner received an amount of Rs.2,08,457/- purportedly against the 50% back wages. Though the Petitioner was reinstated in service from 06.10.2015, salary for the months of October, 2015 to January, 2016 was not paid. The second inquiry was concluded and vide order dated 11.04.2017, Petitioner was exonerated of all charges, save and except, for allegations, which were subject matter of the first Article of Charge i.e. remaining absent from duty unauthorizedly without information w.e.f. 09.05.2012 to 21.09.2012. Petitioner was awarded penalty of withholding of increment for a period of three months without postponing the future increments. Admittedly, Petitioner has not challenged the penalty order, which has

since attained finality. Present petition has been filed restricted to grant of monetary benefits as a fall out of the order of the Division Bench and the subsequent imposition of minor penalty.

6. Since the writ petition is confined to grant of outstanding monetary dues of the Petitioner, after canvassing some arguments, learned counsel for the Respondents had on the last date of hearing sought time to take instructions in the matter so that the matter could be amicably resolved. After obtaining instructions, learned counsel for the Respondents states as follows:-

(A). A sum of Rs.49,323/- deducted from the 50% back wages payable under the orders of the Division Bench as well as a sum of Rs.10,000/- deducted at the relevant time from the salary of the Petitioner for the month of November, 2016 shall be released to the Petitioner;

(B). As far as dues on account of HRA and SPA are concerned, while initially, no amounts were disbursed as the understanding of the Respondents was that wage would not include allowances such as HRA or SPA, however, it has been now decided to release the said allowances in terms of the judgment of the Division Bench whereby only 50% back wages have been awarded to the Petitioner;

(C). Time bound promotions have already been granted to the Petitioner and no order is, therefore, required to be passed by the Court in this regard; and

(D). During the period 09.05.2012 to 21.09.2012, Petitioner was unauthorizedly absent and is thus not entitled to any salary/ allowances for the said period.

7. Learned counsel for the Petitioner, responding to the submissions made on behalf of the Respondents, submits that the

limited issue that remains, at this stage, is 100% HRA and SPA for the period in question and salary and allowances for the period from 09.05.2012 to 21.09.2012 and the Petitioner is entitled to all outstanding dues on this score and the action of the Respondents in denying the same is illegal and arbitrary.

8. Insofar as prayers (c) and (d) are concerned, Respondents have agreed to disburse the said amounts. Let the needful be done within four weeks from today. Insofar as allowances being HRA/SPA are concerned, the allowances are to be paid in accordance with the judgment of the Division Bench in LPA No.881/2013, as aforementioned, where the Division Bench has categorically restricted the relief to 50% back wages on reinstatement of the Petitioner. Any direction by this Court for grant of HRA/SPA calculated beyond 50% of the back wages would be contrary to the direction of the Division Bench. This contention of the Petitioner, therefore, deserves to be rejected and it is held that Petitioner is entitled to HRA/SPA calculated as per the directions of the Division Bench i.e. on 50% back wages.

9. As far as the salary and other allowances for the period 09.05.2012 to 21.09.2012 are concerned, on a pointed query by the Court to the counsel for the Respondents, it was admitted that no order has been passed regulating the said period, after the minor penalty of stoppage of increment for three months, without cumulative effect was imposed on the Petitioner. Regulating the period of absence, upon reinstatement of an employee is, in the first instance, the domain of the employer. It is, therefore, directed that the Respondents shall take a decision with regard to the period of absence from 09.05.2012 to 21.09.2012 and pass a speaking order within six weeks from today. Needless to state, the dues payable to the Petitioner shall be released

to him and the speaking order shall be communicated. In case the Petitioner has any surviving grievance on this aspect, he is at liberty to take recourse to remedies available in law.

10. Writ petition is disposed of in the aforesaid terms.

**MARCH 24, 2023/kks**

**JYOTI SINGH, J**

