

Learned counsel for the petitioner submits that once, the petitioner was retired on medical grounds on 30.06.1995, and the inquiry proceedings were dropped, it was incumbent upon the respondents to treat the period for which the petitioner remained medically unfit as well as the suspension period as a duty period for all intents and purposes much less, for treating the said period as a qualifying period for computing the pensionary benefits. Hence, the action of the respondents in excluding the said period from the period of qualifying service is arbitrary and illegal.

Learned counsel appearing on behalf of the respondents submits that, the petitioner remained absent for 97 days from 19.10.1993 to 23.01.1994 and thereafter, remained under suspension from 24.01.1994 to 16.02.1995 and though, the disciplinary proceedings were initiated but as, the petitioner was retired on medical grounds on 30.06.1995, it was decided the disciplinary proceedings be dropped and his pensionary benefits were released and as the petitioner has not worked from 19.10.1993 to 23.01.1994, the same was treated as "*Leave without pay*" and he was not paid anything over and above his suspension allowance.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

Once, it is not disputed that the petitioner was medically unfit and could not perform his duties from 19.10.1993 to 23.01.1994 which, medical ailment had ultimately led to his retirement on medical grounds on 30.06.1995, the respondents cannot say that the period from 19.10.1993 to 23.01.1994 was unauthorised absence. The petitioner had already submitted the medical certificate from the Civil Surgeon, Ludhiana, copy of which has been appended as Annexure P-1, which clearly shows that the petitioner was

unwell and the said illness ultimately led to his retirement on medical grounds on 30.06.1995.

Further, the unauthorised absence has not been proved by the respondents as the disciplinary proceedings initiated for the alleged unauthorised absence was dropped by the respondents. Once, the disciplinary proceedings were dropped, and no allegation of absence was proved against the petitioner that he remained absent unauthorisedly, the respondents were under obligation to treat the period from 19.10.1993 to 23.01.1994 as a medical leave and the suspension period was to be treated as a duty period as the charges alleged against the petitioner could not be proved.

Even though, no allegation has been proved against the petitioner, still the petitioner has been punished by treating the period during which he was medically unfit as well as the period of suspension as a non-duty period despite the same not being supported by any Rule.

Rather, learned State counsel has not been able to rebut the arguments of the learned counsel for the petitioner that it is only when in the disciplinary proceedings, the charges are proved, the suspension period or the absence period can be treated the way the Department wants but in the present case, no such eventuality arose so as to prove the allegations against the petitioner as respondent No.6 dropped the inquiry proceedings without proving the charge of unauthorised absence or the fact that the petitioner was being medically fit to discharge the duties during the period 19.10.1993 to 23.01.1994. Hence, as the allegations have not been proved, there is no power with the respondents under the Rules governing the service to deny the petitioner the benefit of service period as well as to treat the suspension

period as a duty period for all intents and purposes. It is only in case the allegations are proved and the employee is punished, the jurisdiction decided about the absence period or suspension period vests with the Department which is not, qua petitioner.

Keeping in view of above, the orders dated 12.12.1995 (Annexure P-2) and 12.03.1997 (Annexure P-4) are set aside and the respondents are directed to treat the the period 19.10.1993 to 23.01.1994 as a medical leave and the suspension period from 24.01.1994 to 16.02.1995 as period spent on duty with no further emoluments over and above the suspension allowance.

The present petition is allowed.

In case, by the grant of this benefit, the petitioner becomes entitled for the revision of his pensionary benefits, the same be also revived and the arrears be paid to the petitioner within a period of 3 months from the receipt of copy of this order.

Pending application, if any, also stands disposed of.

01-10-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE:	Whether speaking:	YES/NO
	Whether reportable:	YES/NO