

2024:PHHC:070716



CWP-12814-2019

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-12814-2019

Date of Decision : 20.05.2024

RAKESH SINGH GUSAIN

... PETITIONER

Versus

UNION OF INDIA AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.R.D.Bawa, Advocate
Mr. Randhir Bawa, Advocate
Mr. Rishabh Rana, Advocate
for the petitioner.

Mr. Harneet Singh Oberoi, Central Govt. Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents not to recover salary already paid for the period from 18.12.2015 to 20.07.2016.

2. The petitioner vide movement order dated 17.12.2015 was directed to join at Kohima (Nagaland) in 1642 PNR Company (GREF). He approached this Court seeking direction to respondents to consider his legal notice whereby he had sought cancellation of his transfer. This Court vide order dated 25.01.2016 passed in CWP No. 1572 of 2016 directed the respondents to expeditiously decide his representation. The



respondent rejected his representation and vide order dated 11.03.2016 declared him absent from duty from 02.01.2016 to 11.03.2016. He assailed order of desertion before this Court by way of CWP No.4320 of 2016. The order of desertion was stayed vide order dated 11.05.2016 passed by this Court. The order of movement came to be stayed vide order dated 26.05.2016 passed by this Court. In view of said order, the petitioner was permitted to join on 21.07.2016. The petitioner claims that respondent cannot recover salary which was paid for the period from 18.12.2015 to 20.07.2016. He was ready to work, however, respondent did not permit him to join. The matter was subjudice and respondents acting in an arbitrary manner did not permit him to join. This Court stayed desertion order on 11.05.2016 and movement order was stayed on 26.05.2016.

3. Per contra, Mr. Harneet Singh Oberoi, Central Govt. Counsel submits that respondent is not recovering entire amount of salary paid from 18.12.2015 to 20.07.2016. The respondent intends to recover 50% of salary already paid on the ground that the petitioner was absent from duty during the said period. The petitioner did not work during the aforesaid period. There was lapse on the part of petitioner, thus, he cannot be paid 100% salary.

4. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

5. The petitioner vide movement order dated 17.12.2015 was asked to join at Kohima (Nagaland). He was declared deserter vide order



dated 11.03.2016. The petitioner was treated absent from duty from 02.01.2016 to 11.03.2016. This Court stayed desertion order on 11.05.2016 and movement order on 26.05.2016. As desertion order was stayed on 11.05.2016, there was no reason to deny salary for the period subsequent to 11.05.2016. There was no stay in favour of the petitioner prior to 11.05.2016 and there was movement order in force. The movement order was issued on 17.12.2015 which was stayed on 26.05.2016. In the absence of stay of at least desertion order, the petitioner cannot claim 100% salary for the period from 17.12.2015 to 10.05.2016. The desertion was stayed on 11.05.2016 and movement was stayed on 28.05.2016. He was permitted to rejoin on 21.07.2016. The respondent despite orders of this Court did not permit him to join from 26.05.2016 to 20.07.2016. The respondent is seeking recovery of 50% of the salary for the period the petitioner allegedly remained absent from duty.

6. In the above backdrop, this Court finds that the petitioner is entitled to 100% salary from 11.05.2016 to 20.07.2016 whereas for the period from 17.12.2015 to 10.05.2016, he is entitled to 50% of salary.

7. Disposed of.

(JAGMOHAN BANSAL)
JUDGE

20.05.2024

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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>