

Govind Singh Vs. Director General, Border Force and ors

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Court : Delhi

Decided On : Nov-26-2012

Judge : Pradeep Nandrajog

Appellant : Govind Singh

Respondent : Director General, Border Force and ors

Judgement :

\$~5 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: November 26, 2012 + W.P.(C) 4433/2012 GOVIND SINGH Petitioner Represented by: Mr.Ashok Kumar, Advocate with Mr.Rohit Kumar, Advocate. versus DIRECTOR GENERAL, BORDER FORCE AND ORS Respondents Represented by: Mr.Himanshu Bajaj, Advocate with and Mr.Asit Tiwari, Advocate with Mr.Bhupender Sharma, Parvi Officer, BSF. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE MANMOHAN SINGH PRADEEP NANDRAJOG, J.

(Oral) 1. Learned counsel for the petitioner had made a limited prayer that period interregnum September 3, 2010 when the petitioner was dismissed from service till June 22, 2011 when dismissal was set aside and the petitioner was reinstated in service by the Director General, BSF may be treated as spent on duty limited for the purposes of pensionary benefits.

2. In view of the limited request made, as recorded in the order dated July 26, 2012, we had deferred hearing requesting Director General, BSF to consider

whether the interregnum period could be treated, on notional basis, as spent on duty only for the purposes of pensionary benefits.

3. Learned counsel for the respondents informs us that by an unreasoned decision the Director General, BSF has decided that such period cannot be treated, even on notional basis, as spent on duty for the purposes of pensionary benefits.

4. Relevant facts to be noted would be that serving as Head Constable with BSF the petitioner was subject to a Summary Security Force Court Trial and on being found guilty, punishment inflicted was as per order dated September 3, 2000 that the petitioner be reduced in rank from Head Constable to Constable; he should suffer R.I. for 1 year and would be dismissed from service.

5. The wife of the petitioner filed two representations which were more in the nature of a mercy petition and in the representations since the petitioners wife did not have the benefit of the record of the Summary Security Force Court Trial, she made no reference thereto. The representations were rejected.

6. The petitioner thereafter submitted a statutory representation on July 31, 2001 which was rejected vide order dated October 17, 2001 holding that only one representation against the sentence was maintainable and since petitioners wife had made two representations, first on October 17, 2001 and the second in the month of November, 2001, no further statutory representation was maintainable. Unfortunately, for the petitioner he proceeded for his judicial remedies before the High Court of Judicature at Allahabad where he filed WP(C) 4794/2000 as also another WP(C) 54076/2003 which were dismissed by the Allahabad High Court for want of territorial jurisdiction somewhere in the year 2009, resulting in the writ petitioner filing WP(C) 12144/2009 in this Court which was disposed of by a Division Bench vide order dated April 26, 2001 holding that the so called representations made by the wife of the petitioner could not be treated as statutory representations since evidence led at the trial was not available with her. Mandamus was issued that the representation made by the petitioner on July 31, 2001 be decided.

7. Deciding the same, vide order dated June 22, 2011, the Director General, BSF has opined that insofar penalty of dismissal from service was concerned, the same required to be set aside, meaning thereby the sentence of one year RI undergone by the petitioner was maintained and he being reduced to rank as a Constable from the rank of Head Constable was maintained. Intervening period was held not to be treated as period spent on duty.

8. Since the authority competent to decide the statutory representation has taken a view that penalty of dismissal was unwarranted, keeping in view the past unblemished service record of the petitioner, we are of the opinion that delay occasioned is for two reasons; firstly, it took petitioner couple of years before the Allahabad High Court and unfortunately for the High Court to realize that it had no territorial jurisdiction and secondly, that the authorities of the respondent over looked the fact that what was submitted by the petitioners wife was more in the nature of a mercy petitioner and not statutory representation.

9. Under the circumstances, equities need to be balanced and one form to balance the equity would be that on the principle of no work no pay the petitioner be held not entitled to any wages but for the purposes of pensionary service the interregnum be treated as notionally spent on duty; meaning thereby for this period the petitioner would not earn any increments but the period would be included while computing pensionable service.

10. Accordingly, we disposed of the writ petition directing that the period interregnum September 3, 2010 till the petitioner was reinstated in service would be treated as notionally spent on duty limited for the purposes of counting said period for the purposes of pensionable service rendered. We clarify that the petitioner would not be entitled to any wages or increments during this period.

11. The writ petition stands disposed of with no order as to costs. (PRADEEP NANDRAJOG) JUDGE (MANMOHAN SINGH) JUDGE NOVEMBER 26 2012 skb