

25.
01.8.2023
S.D.

W.P.A. 16545 of 2023

Sanjit Kumar Deb
Vs.
The Union of India & Ors.

Mr. Tarun Kumar Das

..For the Petitioner

Mr. S.N. Dutta

...For the Respondents.

The petitioner prays for disbursal of his retiral benefits in terms of the order dated February 7, 2005. The petitioner's grievance is that despite the order dated February 7, 2005 modifying the punishment awarded to the petitioner by the order dated March 31, 1997 passed by the disciplinary authority such service benefits were not being granted to him. By the order dated March 31, 1997, the disciplinary authority reduced the punishment of the petitioner from **removal** from service to reduction of pay to the lowest stage, i.e. from Rs.900/- to Rs.855/- in the time scale of pay of Rs.825/- - Rs.1200/- for a period of two years, with effect from the date of re-joining on reinstatement. It was held that the petitioner will not get increment of pay during the period of reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay. Furthermore, it

was held that the intervening period from the date of **removal** from service till date of reinstatement will be treated as *dies non*.

The Hon'ble Coordinate Bench directed that the reduced order of punishment will not have any cumulative effect. An appeal was preferred from the said order of the Coordinate Bench. The Hon'ble Division Bench dismissed the appeal and observed that the punishment would not have any cumulative effect. It was held that if the writ petitioner was deprived of any financial benefits by the reason of the order dated March 31, 1997, the authorities concerned would take steps to restore such benefits to the petitioner.

Mr. Dutta, learned counsel appearing on behalf of the respondent authorities is directed to file a Report on Affidavit showing whether the petitioner's payment of service benefits were made in accordance with the order passed by the Hon'ble Division Bench by showing (a) whether increments were given for two years during the period of reduction and (b) whether future increments were postponed due to such reduction. The Hon'ble Division Bench held that the 1969 CISF Rules were the applicable Rules when the Disciplinary Proceedings were concluded on March 31, 1997. The authorities sought to impose a punishment under 34(v) of 2001

Rules which the Authorities had no power to impose under Rule 31 of 1967 Rules.

There was no consideration of the issue regarding the period when the petitioner was out of service to be treated as 'Dies Non'. The said penalty was also not challenged.

Therefore, this Court is *prima facie* of the view that the last paragraph of the order dated April 9, 2019 has to be read in the context in which it was passed and the issue with regard to the period of removal being treated as 'Dies Non' cannot be re-agitated again in the present writ petition.

Let such Report on Affidavit be filed by August 18, 2023.

Exception thereto, if any, be filed by September 1, 2023.

Let the matter appear for further consideration under the same heading "**Motion**" on **September 4, 2023**.

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

(Lapita Banerji, J.)