

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH  
AT JAMMU**

SWP No.9900003/2015

Zail Singh

....petitioner(s)

Through :- Mr. C.M.Koul Sr. Advocate with  
Mr. A.R.Bhat Advocate.

V/s

UOI and ors

....Respondent(s)

Through :- Mr. Eishan Dadeechi, CGSC.

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**

**JUDGEMENT(ORAL)**

1. In this petition, the petitioner has primarily sought a direction to the respondents to treat his period of absence from 01.08.1992 to 08.02.2009 as on duty in view of the judgment passed by the High Court of Punjab and Haryana in CWP No. 2488 of 1994 filed by the petitioner to challenge the imposition of penalty of removal from service. He also prays for a certiorari to quash the communication/signal which has emanated from the Police NES, HQR, whereby the claim of the petitioner for treating the intervening period as on duty has been rejected.

2 Briefly stated the facts leading to filing of this petition are that vide order dated 28<sup>th</sup> July 1992 passed by Commandant, 10<sup>th</sup> Bn. CRPF, the petitioner

same was allowed by the High Court of Punjab and Haryana vide its judgment dated 31.01.2007. The impugned orders were quashed and a direction was issued to the respondents to take back the petitioner in service. The petitioner was, however, held entitled to 50% of the arrears of pay and allowances on the ground that he had not been in actual service of the respondents since the passing of the impugned order. The respondents have complied with the judgment, but have not given the benefit of continuity in service to the petitioner. The petitioner appears to have represented before the respondents for treating his intervening period as on duty and for release of consequential benefits. On the representation of the petitioner, the matter was considered by the Commandant, 10<sup>th</sup> Bn. CRPF, who vide his communication dated August, 2013 requested the Deputy Inspector General of Police, CRPF Range Gowhati (Assam) to examine the matter and confirm his view as to whether the period from 01.08.1992 to 08.02.2009 (intervening period) for which the petitioner stood paid 50% of the back wages should be treated as period spent on duty or otherwise, so that that various service matters such as accrual of Annual Increment, grant of MACP, qualifying service for calculation of pension etc., can be regularized. The DIG of Police CRPF Range Gowhati vide his impugned signal conveyed to the Commandant concerned that since the petitioner has only been held entitled to 50% of the back wages and has not performed any actual duty during the intervening period, as such, the period between 01.08.1992 to 08.02.2009 cannot be treated as on duty. He, however, opined that the intervening period of the petitioner may be

4. Having heard learned counsel for the parties and perused the material on record, I am of the considered view that the petitioner has succeeded before the High Court of Punjab and Haryana in CWP No. 2488/1994. The High Court of Punjab and Haryana has not only set aside/quashed the impugned orders but has also directed the respondents to take back the petitioner in service. There is a categorical direction to the respondents to pay the petitioner 50% of the arrears of pay and allowances which clearly signifies that the High Court of Punjab and Haryana has held the petitioner entitled to notional continuity in service and has, thus, instead of paying the full back wages, has allowed only to the extent of 50%. In this background, it cannot be contended by the respondents that the intervening period is only liable to be regularized for the purpose of paying the 50% of the salary and for no other purpose.

5. I am in agreement with the observations made by the Commandant 10<sup>th</sup> Bn. in its communication of 2013 addressed to DIG Police CRPF Range, Gowhati. Once the removal from service of the petitioner has been set aside and he has been put back in service, as a necessary consequence, he shall be deemed to be in service during the intervening period. This is so, because it is this period when he was prevented from performing the duties because of the impugned order of removal from service. It is not the case of any willful absence on the part of the petitioner for which he could be denied the wages and other service benefits. The Punjab and Haryana High Court has, in its discretion, restricted back wages only to the extent of 50%. The respondents are, thus, required to

6. The respondents shall consider the case of the petitioner by treating him notionally in service for the intervening period between 01.08.1992 to 08.02.2009 and also consider him for grant of consequential benefits that may accrue to him on such continuation in service within a period of eight weeks from the date, certified copy of this order is served upon the respondents.

**(Sanjeev Kumar)**  
**Judge**

Jammu:  
28.01.2022  
Sanjeev

Whether order is speaking: Yes  
Whether order is reportable: Yes/No

