
(2013) 10 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1723 of 2013

Union of India and Others	Vs	APPELLANT
Puran Singh		RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2014) LabIC 161

Hon'ble Judges : Surya Kant, J; Surinder Gupta, J

Bench : Division Bench

Advocate : Karminder Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Surinder Gupta, J.—There is delay of 398 days in filing the instant Letters Patent Appeal. The writ petition was decided by the learned single Judge on 9.7.2012 and the review petition filed by the appellant was also dismissed on 22.1.2013. In the application for condonation of delay, it has been averred that after the decision of the civil writ petition and the review petition, opinion of the counsel at different levels were obtained. The Government counsel gave his opinion on 1.5.2013, which was received on 6.5.2013 and the case was processed and sent for approval before the competent authority i.e. DTE (General) ITBP. Thereafter advice/opinion of Ministry of Law & Justice was obtained resulting in 398 days" delay. After going through the application and hearing learned counsel for the appellant, we find no valid reason to condone such inordinate delay in filing the appeal. The appellants have not been able to put forth any cogent and convincing cause for the delay of 398 days in filing this appeal. The application for condonation of delay is declined.

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2. We have also heard the appellants' counsel on merits.

3. This Letters Patent Appeal impugns the order dated 9.7.2002 passed by the

learned single Judge, whereby the claim of the writ petitioner-respondent was allowed.

4. The respondent joined Indo Tibetan Border Police on 1.10.1990 as Constable. He was participating in various sports activities on behalf of his department like Boxing, Judo, Kabaddi etc. While playing Kabaddi for the department, he suffered injury and was declared medically unfit w.e.f. 9.11.2004 till 19.11.2005. He was examined by the Medical Board and as per certificate dated 3.7.2007, Annexure P-3, he was placed in LMC P2 (T-24) and the disability was depicted as "suffered during service". Despite this, he participated in events of Judo & Boxing to represent his unit for competition held at "Babeli Camp" Kulu, Himachal Pradesh on 30.6.2008 and Boxing competition held on 23.3.2008. During the period he was declared medically unfit, he performed his duties continuously in President's House with full devotion and dedication. During the period he remained medically unfit, his name was excluded for the promotion to the higher rank. After being declared medically fit, he made representation for considering his claim for promotion to the higher rank because junior to him have already been promoted. Despite repeated requests, no action was taken which led to the filing of the writ petition.

5. The learned single Judge considered the question as to whether the injury which has been received by the respondent resulting into his Medical Category Low could be relaxed in the light of the instructions dated 6.6.2002 (Annexure P/6) and answered the same as follows:--

As is apparent from the certificate (Annexure-P-1), the injury which the petitioner received, was sustained by him on the spinal area while playing Kabaddi at Bathinda. Further, as per the Medical Board Report dated 27.2.2009 (Annexure-P-7), the disability because of which the petitioner has been assessed as Low Medical Category, has been held to be contracted in service as per column No. 19 thereof. It would not be out of way to mention here that in the said report also, petitioner has been declared in Medical Category Shape-I with effect from 27.2.2009, the date of the report. The promotion, which has been made of the juniors, is in July, 2009 and, therefore, the claim of the petitioner for promotion with effect from July 2009, cannot be denied to him irrespective of the benefit which the petitioner is entitled to as per the Instructions 6.6.2002 (Annexure-P-6) issued by the respondents themselves. These Instructions dated 6.6.2002 (Annexure-P-6) also support the claim of the petitioner and it cannot be said that the injury, which the petitioner had received, would not be covered by the said instructions.

6. This fact is admitted that the respondent has received the injury while playing Kabaddi for the department, as such, the injury was received during the discharge of his official duty and thereby making him entitled for relaxation as per terms of the circular dated 6.6.2002 (Annexure PAS).

7. Learned counsel for the appellant has tried to impress upon the point that

after fulfilling the eligibility conditions for promotion to the post of Head Constable in the year 2008, the respondent was brought on the approved list "C" and by now he has been promoted as Head Constable. Submissions made by learned counsel for the appellant have not impressed us. A Constable who is playing despite being declared low medical category just to keep the honour of his department high, deserves to be considered sympathetically under the rules/instructions for promotion. If he has received any injury during the discharge of his duty, it should be taken as disability for the purpose of relaxation under the instructions dated 6.6.2002 (Annexure P/6).

8. There is no legal or factual infirmity in the observations made by the learned single Judge that the respondent is entitled to promotion with effect from the date when the persons junior to him were promoted as Head Constable (GD) along with all consequential benefits.

9. There are no merits in the appeal. Dismissed.