

(2022) 09 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 111 Of 2011

Union Of India & Others

APPELLANT

Vs

Kapil Dev

RESPONDENT

Date of Decision : 16-09-2022

Acts Referred:

Citation : (2022) 09 J&K CK 0047

Hon'ble Judges : Tashi Rabstan, J; Sindhu Sharma, J

Bench : Division Bench

Advocate : Vishal Sharma, Ankesh Chandel

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. This Letters Patent Appeal is directed against the judgment dated 23.03.2021 delivered by the learned Single Judge in SWP No.161/2018, whereby the learned Single Judge while allowing the writ petition directed the writ respondents, appellants herein, to pass order of promotion of writ petitioner to the rank of Deputy Commandant after giving relaxation in terms of Para 4.17 of Standing Order No.4 of 2008.

2. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal file.

3. Admittedly, the appellants-writ respondents rejected the claim of writ petitioner for grant of senior time scale on the ground that the injury, because of which the writ petitioner has been placed in low medical category, has occurred while not being on active duty in view of Para 4.17 of the Standing Order No.4 of 2008. In terms of Para 4.17 of the Standing Order No.4 of 2008, relaxation for S1H1A1P1E2 medical category for promotion is admissible only to those personnel, who are kept in low medical category due to wound/injury during field firing/accidental firing/explosion of mines or explosive devices or due to accident

while on active government duty in India or abroad.

4. It is not in dispute that the writ petitioner came to be placed in low medical category, i.e., S1H1A1P1E2 because of the wound/injury suffered by him while playing cricket during game period. The only question to decide before the writ court was: as to whether the injury, because of which the writ petitioner came to be placed in low medical category, had occurred while being on active duty or not. The learned Single Bench while relying upon the judgment of Delhi High Court in Venkatesh vs Union of India (WP(C) 11263/2015) held that the injury sustained by the writ petitioner cannot be said to have been suffered while not on active duty. We are also in complete agreement with the interpretation put forth by the Delhi High Court on the term "active service" as well as the findings of the learned Single Bench that a CRPF personnel while playing the game during game period, which is an integral part of his duty, cannot be said to be out of "active service". Even otherwise, in a contempt petition, being CCP(S) No.187/2021, filed by the writ petitioner, which came to be disposed of on 04.08.2022, Mr. L.K. Moza, appearing for writ respondents, had made a statement before the Court that the judgment dated 23.03.2021 has been complied with; the writ petitioner has been granted Senior Time Scale vide order dated 04.05.2021, besides having been promoted to the rank of Deputy Commandant vide order dated 02.06.2022 and his seniority has also been fixed notionally in the rank of Deputy Commandant with effect from 02.11.2016.

5. Viewed thus, we do not find any merit in the appeal and the same is, accordingly, dismissed.