

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 5980 of 2007(O&M)

Date of decision :30.03.2015

Kamal Kumar

..... Petitioner

versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Arun Bansal, Advocate for the petitioner.

Ms.Ranjana Shahi, Advocate, Standing Counsel
for the respondent-UI and others.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioner has claimed two reliefs:

i) quashing of order dated 19.08.2006 (Annexure P-2) reverting him from the post of Head Constable to that of Constable; ii) directing the respondents to expedite the grant of payments due to him.

The admitted facts are that the petitioner was working as a Constable when in a battle against militants he suffered bullet injuries as a result of which his leg was amputated above the knee. Prior to the year 2000 a pre-requisite for promotion in BSF was that the candidate should be in SHAPE-1 physical category. However, by

letter dated 14.09.2000, the Government of India, Ministry of Home Affairs had accepted a proposal having been sent by the BSF and Assam Rifles regarding relaxation of condition for such personnel who were injured while fighting against enemy/militants or in accident while on active duty. Admittedly thereafter the petitioner was promoted as Head Constable by order dated 14.12.2001. In the year 2006 the impugned order was passed on the ground that subsequently the Ministry of Home Affairs had clarified that the benefit of such relaxation would be granted only to officers and not to ORs.

Learned counsel for the petitioner has made a two pronged attack. His first ground is that limiting this beneficial provision only to officers is arbitrary and discriminatory and secondly, having been promoted for five years it was incumbent upon the respondents to have issued a notice to him before any action could be taken to revert him.

Learned Standing Counsel on the other hand has defended this action on both the grounds.

In my opinion once the Ministry of Home Affairs had specifically granted the benefit to all ranks who had suffered injuries while fighting against enemy/militants or in accident while on active duty could not later on limit it only to officers. Obviously the object sought to be achieved by the relaxation was to grant some benefit to personnel who had endured injuries while fighting for the mother land and there is no reason why this beneficial provision should have been limited only to officers and that too with a retrospective effect, even

without giving a show cause notice. The classification not only has no nexus with the object of granting relief to the injured combatants but is rather contrary to that object. This kind of classification would rather deter other ranks from fighting fearlessly because they would feel that if they are injured they would get no benefit while officers would get the benefit. The classification may even have the effect of putting officers to higher danger for this reason.

Consequently the action of the respondents in reverting the petitioner has to be set aside. The petitioner is directed to be treated as a Head Constable from the date of his initial promotion with all consequential benefits.

As regards the second prayer, learned standing counsel states that during the pendency of this writ petition all benefits like pension, disability pension, leave encashment etc. have been released to the petitioner.

In the circumstances this petition is disposed of with a direction to the respondents to consider the petitioner as a Head Constable from the date of his initial promotion till the date of his retirement and work out all the benefits payable to him and release the same to him within a period of three months from the date of receipt of a certified copy of this order. This, of course, would include any enhanced superannuation benefits also. It is made clear that if any amount due is not paid within the aforesaid period, the petitioner would be entitled to claim the said amount/s from the date/s they became payable till the date of payment along with interest at the rate of 8%

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Since the main case has been decided, the Civil Misc.
Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

March 30, 2015
sunita