

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

208

CWP No.14468 of 2014
Date of Decision: 15.01.2015.

Ex. Sepoy Gurjit Singh

.....Petitioner

Versus

Union of India & others

.....Respondents

**CORAM:HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Navdeep Singh, Advocate
for the petitioner.

Mr. Brijeshwar Singh Kanwar, Sr. Standing Counsel
for respondents-UI.

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?***

SURYA KANT, J. (ORAL)

The petitioner who was enrolled in the Indian Army on 03.08.2005, sustained injury on 02.02.2010 in an accident as a result thereto, the Medical Board put the petitioner in low medical category resulting into his discharge from service w.e.f. 31.03.2012.

[2]. The petitioner challenged the above-stated action before the Armed Forces Tribunal, Regional Bench, Chandigarh, who vide order dated 29.05.2014 (Annexure P-1) found the petitioner's claim to be squarely covered by a decision of this Court dated 19.05.2014 passed in **CWP No.988 of 2012 (Subedar Manjit Singh Vs Union of India and others).**

The Tribunal thus held as follows:-

“14. *The above decision applies on all fore to the facts of*

the case which are similar. In the present case also the order of discharge was passed already but as per the relevant rule reproduced above, the individual can be discharged on the recommendations of the Release Medical Board only. Therefore, the present petition deserves to be allowed applying the above provisions of the rule interpreted by the Punjab and Haryana High Court.”

[3]. Having held so, the Tribunal in para 15 of its order further held that the petitioner is not entitled to monetary benefits for the period he was not in service and that the doctrine of 'No Work No Pay' was attracted in the light of decisions of the Hon'ble Supreme Court in (i) **Hans Raj Sharma Vs. Union of India and others, 1994 Suppl.(3) SCC 498** and (ii) **Union of India and others Vs. Jaipal Singh, 2004(1) SCT 108.**

[4]. In addition to the above cited-decisions learned counsel for the respondents has cited one more decision of the Hon'ble Supreme Court in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others 2013 STPL (Web) 703 SC** to support the view taken by the Tribunal.

[5]. The short grievance of the petitioner in the instant petition is that since he was deprived of serving the Army due to per-se illegal action of the respondents and he had no other means of sustenance during the period when he was out of service, he is entitled to all the consequential benefits, more so when the same were granted by this Court in the case of **Subedar Manjit Singh's case** (supra) in terms whereof the petitioner's claim has been accepted.

[5]. We have heard learned counsel for the parties and gone through

the record.

[6]. It is undeniable that in Subedar Manjit Singh's case (Annexure P-4) this Court directed that:-

“In view of the said fact, the order of discharge taken without opinion of the Release Medical Board cannot be sustained and consequently the same is set aside. The respondents shall treat the petitioner to be in service and grant all the consequential benefits in accordance with law within three months. However, it shall be open to the respondents, to subject the petitioner for medical examination with the purpose to determine his suitability to army service.”

[7]. The principles laid down by the Hon'ble Supreme Court in the decisions relied upon by the Tribunal or the one have cited by the respondents are distinguishable and would not be attracted to the facts of the case in hand. Hans Raj Sharma's case pertain to recruitment for permanent commissioning in the Army Medical Corps (Non-Technical) on the recommendations of the Service Selection Board. The action of the authorities in denying appointment was held to be illegal and consequently it was directed that the appellants be granted permanent commission with all consequential benefits as were granted to the other selected candidates for the 1986 quota except the payment of backwages. In Deepali Gundu Surwase's case (supra) the principles regarding admissibility of backwages as a part of consequential benefits have been elaborately dealt with laying down that in the case of illegal dismissal/removal of the service, the consequences are so serious that the same cannot be measured in terms of money only. It was ruled that in such a case if the employer wants to deny

backwages or contests the claim for consequential benefits, then it is for the employer to plead and prove that during the intervening period the employee was gainfully employed or was getting some emoluments. It was observed that denial of backwages to an employee who has suffered due to illegal action of the employer would amount to indirect punishment to such employee.

[8]. The aforesaid principle, in our considered view, is nearer to the facts of the case in hand as compared to other decisions.

[9]. For the reasons aforestated, we allow the writ petition, modify the order dated 29.05.2014 passed by the Tribunal and hold the petitioner entitled to all the consequential benefits including arrears of pay, which shall be released in his favour within a period of four months subject to the reconstitution of the Medical Board, if any, within a period of two months from the date of receipt of certified copy of this order.

[10]. Ordered accordingly.

(SURYA KANT)
JUDGE

15.01.2015
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(RAJ MOHAN SINGH)
JUDGE