

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

LPA No. 1256 of 2015 (O&M)

DATE OF DECISION : 27.08.02015

Union of India and others

.... APPELLANTS

Versus

Kamal Kumar

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Suvir Sehgal, Advocate,
for the appellants.

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SATISH KUMAR MITTAL, J. (Oral)

Unfortunately, the Union of India and its officers have filed this intra-court appeal under Clause X of the Letters Patent against a just and well reasoned order dated 30.03.2015 passed by the learned Single Judge, whereby justice has been given to a soldier (respondent herein) employed in the Border Security Force (BSF), who became handicapped while discharging his duties.

Vide order dated 19.08.2006 (Annexure P-2), the appellants reverted the respondent from the post of Head Constable to the post of Constable, without providing an opportunity of hearing. Vide the impugned order dated 30.03.2015 passed in CWP No. 5980 of 2007 filed by the respondent, the said order has been set aside by the learned Single Judge,

and the appellants have been directed to work out all the benefits payable to the respondent.

In this case, when the respondent was fighting 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, vide 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. In terms of the said circular, the respondent was promoted as Head Constable vide order dated 14.12.2001. However, after about five years, vide order dated 19.08.2006, the said order of promotion was withdrawn and the respondent was reverted to the post of Constable, without providing him an opportunity of hearing. The said action of the appellants was challenged by the respondent by filing the aforesaid writ petition (CWP No. 5980 of 2007), which has been allowed by the learned Single judge vide the impugned order dated 30.03.2015, while observing as under :-

“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% p.a.”

Though there is delay of 103 days in filing the instant appeal and the appellants have filed an application (CM No. 2675-LPA of 2015) for condoning the said delay, yet we have heard learned counsel for the appellants on merits and have gone through the impugned order passed by the learned Single Judge.

During the course of hearing, it has not been disputed by learned counsel for the appellants that the order of reversion was passed without affording an opportunity of hearing to the respondent. Regarding the plea of discrimination, it has also not been disputed that the benefit of instructions/letter dated 14.09.2000 was given only to the officers, but not to the soldiers/Constables. In this regard, no justified explanation has been furnished by the appellants. The learned Single Judge rightly found the alleged discrimination as arbitrary and illegal. Noticing all these admitted facts, the learned Single Judge quashed the action of the appellants. In our opinion, in such a case, where the appellants are not in a position to defend their illegal and arbitrary action, they should not have filed the appeal, particularly when the appellants are Union of India and its officers.

In view of the above, the instant appeal is dismissed with costs, which are assessed at ₹ 20,000/-, to be deposited by the appellants with the Punjab State Legal Services Authority.

(SATISH KUMAR MITTAL)
JUDGE

August 27, 2015
ndj

(REKHA MITTAL)
JUDGE