

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

CWP No.337 of 2017 (O&M)

Date of Decision: 3.2.2017

Sahib Singh

... Petitioner

Versus

Government of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jai Vir Yadav, Advocate for the petitioner

RAJIV NARAIN RAINA, J.

CM No.886 of 2017

Mr.Yadav, learned counsel for the petitioner points out to errata in the memo of parties. The mistake occurred when respondent no.1 was not impleaded through the Director of the Department concerned. This mistake has been corrected by furnishing an amended memo of parties.

CM is allowed and the amended memo of parties is taken on record.

CWP No.337 of 2017

1. The petitioner was medically boarded out of service of the Central Industrial Security Force [CISF] on 9th October, 2002 on account of suffering disability assessed at one hundred percent. The disability gave rise to entitlement of Disability Pension and further revision of pay as per recommendations of the 6th Central Pay Commission on pensions which the

petitioner is admittedly getting since 1st April, 2014. His first prayer is for enhancement of disability pension which he says requires enhancement to be suitably pegged as per existing parameters on account of revision of pay by the 6th Central Pay Commission. In addition, the petitioner claims he is entitled to disbursement of Constant Attendance Allowance as he is suffering from 100% disability and is completely dependent on an attendant whose help is necessary even for carrying out day to day activities. He cites Office Memorandum dated 7th December, 2009 issued by the Government of India in the Ministry of Personnel, Public Grievance and Pensions, Department of Pension and Pensioners Welfare, New Delhi. The petitioner also cites the recommendations of the 6th Central Pay Commission in para 5:1.44 of its report in his favour which is as under:-

“In the case of pensioners who retired on disability pension under the CCS (Extraordinary Pension) Rules, 1939 for 100% disability (where the individual is completely dependent on somebody else for day to day function), a Constant Attendant Allowance of Rs.3,000/- p.m. shall be allowed in addition to the disability pension, on the lines of existing in Defence Forces.”

2. This Circular further stipulates that Constant Attendance Allowance even to civilian employees is required to be increased by 25% every time the dearness allowance on the revised Pay Bands goes upto 50%. As against this head the petitioner claims ₹ 3000/- per month. The petitioner made a request to the respondent-authority by serving legal notice dated 14th January, 2016 (Annex. P-2) on them through his counsel which has evoked a response, not by an order, but by way of reply to the legal notice which reads as under:-

“Sir,

This is w.r.t. your legal notice dated 14.01.2016.

2. It is to inform that your client was granted invalid pension as he was declared incapacitated for the service by the board of doctors. His disability was not attributable to Govt. Service but his own negligence. Thus, as per rule he is not entitled for Constant Attendance Allowance.

3. Your client may be informed accordingly.

Yours sincerely

sd/- 22.04.16

Assistant Inspector General
For Inspector General/North Sectors”

3. It is not spelled out whether the “Assistant Inspector General For Inspector General/North Sectors” is the competent authority to issue an order on the representation/legal notice/request for demand for justice which is binding on the rights of the petitioner. It is settled proposition of law that when governments speak, they speak formally and in writing by way of passing orders and not by passing on information as contained in the reply. If the reply is not in the shape of an order, this Court will not be certain as to what is the final view of the CISF in the Home Ministry, Govt. of India. Besides, no particular rule has been quoted which prescribes that when cause of disability is not attributable to government service, it implies “his own negligence”, and therefore, the petitioner would not be entitled to Constant Attendance Allowance. Even the Office Memorandum dated 7th December, 2009 has not been referred to.

4. Moreover, a final decision has not been taken so far as to the increase in quantum of disability pension as mentioned in paragraph 4 of the legal notice and the issue is still at large. In Kailash Devi vs. State of Punjab,

2016 (2) SCT 216, this Court held that reply to representations/legal notices prepared by an Officer of the employer are not to be treated per se as adverse orders passed by the competent authorities for the purposes of judicial review. In *Kailash Devi (supra)*, I had commented on such responses to legal notices in the background of judicial review as follows:-

“In any case, a letter written in response to a legal notice cannot be accepted as a view of the Government unless it comes from competent authority and therefore no faith can be placed on the document nor can the Court on the writ side go blindly on it. Such instances have come to the notice of this court in the present roster where the orders impugned are in the shape of replies filed to the legal notices/ representations. This is not a happy situation. The Government is legally bound to decide the legal notice by passing orders and rendering decisions by the competent authority, who only could be made responsible for actions of the Government on judicial review before this Court. This fact needs to be put to an end as it cannot substitute an order made after due application of mind. Consequently, this Court cannot treat the letter dated 15th September, 2015 (Annex P-16) as an order of the Government. All that it means is that it shows the working of the mind of the signatory. In the circumstances, it will have to be accepted that there is no order, which takes us back to the legal notice. The infirmities pointed out in the reply to the legal notice may be kept in mind when the competent authority takes up the legal notice (Annex P-15) and passes a speaking order containing reasons as to why in the case of the petitioner that Krishan Kumar should not be declared regular under the regularization policy available prior to 1st January, 2004 if his case squarely falls in one.”

5. This Court reaffirmed this view in its judgment passed in CWP No.25342 of 2016 (Satish Kumar and others vs. Kurukshetra University and another decided on 8th December, 2016) that it is not proper for any instrumentality of State to treat a para-wise reply to a notice of demand for justice as an order issued by it, unless it has been authorised by the statutory authority competent to pass binding order settling rights of parties and the fact of competency is duly indicated in the response before it can be accepted by the writ court as a binding adverse decision based on original record duly considered and reflected in the reply to ignite jurisdiction of judicial review of administrative action. Failing which, the reply to the legal notice cannot be treated in law as an order settling the rights of the parties and binding on them. It can only be treated as an opinion of an Officer which ought not to be put to judicial scrutiny as if it was the view of the competent authority unless it manifestly says so. It is not that reply to a legal notice should not be given, but it should be accompanied by an order in writing passed by the competent authority and in the format the CISF applies to pass adverse orders reflecting upon the rights of the parties.

6. As a result, this petition is partially allowed. The operation of the impugned communication is kept in abeyance till such time as a final order is passed by the competent authority duly conveyed to the petitioner settling rights either in his favour or against him. Orders be passed accordingly within 2 months from the date of receipt of a copy of this order, either from the court or from the petitioner, whichever is earlier. If the petitioner requests personal hearing, the same shall be granted. If the claims

are found genuine and in accordance with law, then the benefits be granted within reasonable time but not beyond three months.

The writ petition stands disposed of as above.

3.2.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No