

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.2503 of 2016 (O&M)

Date of Decision: 01.02.2017

Commando Constable Jaivir

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

Present: Mr. GS Gopera, Advocate for the petitioner

SURYA KANT, J. (Oral)

(1) Notice of motion. On our asking, Mr. Lokesh Sinhal, Addl. AG Haryana accepts notice on behalf of respondents. In view of the nature of order which we propose to pass, there is no necessity to call upon the respondents to file reply at this stage.

(2) Heard learned counsel for the parties.

(3) This Letters Patent Appeal is directed against the order dated 05.12.2016 vide which the learned Single Judge has dismissed the appellant's writ petition on the ground of delay and laches. The appellant sought a direction for his retrospective appointment as Commando Constable from the date his other batch-mates were appointed.

(4) The facts as such are not in dispute.

(5) The appellant was selected for appointment as Commando Constable in the year 2003. While most of the selected candidates were given appointment, some candidates including the appellant were denied the same on the ground of pendency of criminal cases against them. The aggrieved appellant approached this Court by way of CWP No.8288 of 2004 which was disposed of by a Division Bench on 21.07.2005 with a direction to respondents

to appoint him within a period of three months from the date of receipt of copy of that order. The appellant was consequently appointed on 27.10.2005.

(6) It further appears that one Bhoop Singh was also selected along with appellant and he too was denied appointment on the same ground. Incidentally, both the petitioner and Bhoop Singh were accused of committing the offence of affray in the same incidence. Bhoop Singh also filed CWP No.18719 of 2004 which was finally allowed on 12.09.2012 with a direction that he *“be appointed from the date when candidate lower in merit to him was appointed”*.

(7) The resultant effect is that Bhoop Singh has got appointment from the year 2003-04 when other Commando Constables were appointed whereas appellant got the same from 2005.

(8) As soon as the appellant came to know about Bhoop Singh's appointment from the date of other batch-mates, he submitted a comprehensive representation which was declined by the Director General of Police without assigning any reason. His writ petition has been dismissed by learned Single Judge on the ground of delay and laches.

(9) Having heard learned counsel for the parties, it appears to us that a part of the cause of action arose to the appellant only when Bhoop Singh was given appointment from the date of appointment of their batch-mates. That happened only in the year 2013. In this view of the matter, it cannot be said that the appellant is guilty of delay and laches of such a nature that the doors of the Court must be closed for him.

(10) We are satisfied that the appellant deserves to be meted with the same treatment as has been extended to Bhoop Singh.

(11) For the reasons afore-stated, the appeal is allowed in part; the order of learned Single Judge is modified and the appellant's writ petition is accepted to the extent that the order rejecting his claim dated 11.12.2013 (P6) is set aside with a direction to the authorities to re-consider the appellant's claim on the analogy of Bhoop Singh, however, on notional basis without payment of arrears of pay.

(12) Appropriate orders be passed within four months from the date of receipt of certified copy of this order.

(Surya Kant)
Judge

01.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No