

220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8843-2018 (O&M)
Date of Decision: 18.10.2019

Kapil Dev

... Petitioner

v/s

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present :- Mr. Keshav Gupta, Advocate for the petitioner.
Ms. Gehna Vaishnavi, Advocate for the respondents.

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ARUN MONGA, J. (ORAL)

1. In an earlier round of litigation instituted by the petitioner this Court had issued directions vide order/judgment dated 01.08.2016 directing appointment of the petitioner as Constable in Border Security Force within two months of passing of the said judgment. Considering the said judgment attained finality and was implemented by the respondents but not within the time period as directed. The delay was entirely attributable to the respondents. The appointment letter was issued belatedly on 17.04.2017. However, before the petitioner could join pursuant to the said appointment letter, he met with an accident on 11.05.2017 which led to an implant being placed in his leg.

2. Faced with the unfortunate circumstance, petitioner vide his letter dated 06.07.2017 requested for extension in joining time so as to enable him to recover from the injury suffered in accident. His request was accepted but he was given time only up to 23.09.2017 vide letter dated 09.08.2017 (Annexure R1/17) issued by the competent authority. The petitioner in the meanwhile was given strict medical advice that in case he

does not want his leg to be amputated his implant should continue for another period of 1½ year at least. Faced with the peculiar circumstances and being under medical advice, the petitioner requested for extension of time and submitted his medical certificate (Annexure R1/20) before the competent authority. Notwithstanding the competent authority vide order dated 05.01.2018 impugned herein rejected the request of the petitioner ostensibly on the ground that the appointment letter cannot be kept alive beyond six months relying on office instructions dated 09.08.1995 (Annexure R1/22).

3. Hence the fresh round of litigation by way of present writ petition. In the return filed by the respondent, claim of the petitioner has been resisted relying on the instructions (Annexure R1/22).

4. I have heard the rival contentions of learned counsel for the parties and have also perused the pleadings along with the relevant record appended thereto. Before advertng on the merits of the case, it would be apposite to reproduce **Rule 6 of Border Security Force Rules, 1969** hereunder:

“6. Case un-provided for:- In regard to any matter not specifically provided for in these rules it shall be lawful for the competent authority to do such thing or take such action as may be just and proper in the circumstances of the case.”

5. A perusal of the above would reveal that in the event circumstances of a case warrant so, the competent authority is fully empowered to pass the appropriate orders or take such action as may be just and proper. In my opinion, therefore, to rely on the instructions by ignoring

this rule was highly improper on the part of the competent authority.

6. Even otherwise, in the peculiar circumstances, I am of the opinion that on one hand the delay was caused by the competent authority in issuing the appointment letter to the petitioner which led to his being under constant wait for joining the service. Had the letter been issued as per the directions of the Court within the prescribed period, in all probability, he would have been posted at some border area and serving the country and it is just possible, he would not have been visited with the unfortunate accident.

7. Be that as it may, the impugned order relying on the instructions in supersession of the Rules is not sustainable in law. In the aforesaid circumstances, the same is set aside and respondents are directed to issue fresh appointment letter to the petitioner in compliance with the letter and spirit of the earlier judgment passed by this Court which has attained finality. The same shall be subject to medical examination of the petitioner and in the event of his being fit, he would be given necessary appointment in accordance with law.

8. Needless to say that the petitioner would be entitled to continuity of service as was originally directed vide judgment dated 01.08.2016.

9. Let the needful be done with a period of two months from the date of receipt of a certified copy of this order.

10. Disposed of in above terms.

October 18, 2019

Janki

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No