

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

LPA-300-2020 (O&M) in
CWP-97-2018
Date of Decision: 19.03.2020

Union of India and others

...Appellants

Versus

Sahib Singh

...Respondent

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr.O.P.Dabla, Advocate for the appellants.

SANT PARKASH, J.

CM-811-LPA-2020

Prayer in the application is for condonation of delay of 59 days in filing the present *intra-court* appeal.

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 59 days in filing the appeal is condoned.

CM-810-LPA-2020

Application is allowed. Exemption sought is granted.

Main Case

Instant *intra-court* appeal under clause X of the Letters Patent is directed against the judgment dated 05.12.2019 (Annexure-A) passed by the learned Single Judge, vide which the writ petition filed by Sahib Singh (respondent herein) has been allowed in the following terms:-

“Resultantly, the petitioner has made out a case for reconsideration. Accordingly, as per the instructions dated 16.04.2009, as reproduced above, the case of the petitioner be put up before the Medical Board, as per the declaration form attached along with the said instructions. On the basis of the said opinion of the Medical Board, the case of the petitioner shall be duly considered for the benefit of CAA. Needful be done within a period of 3 months from the receipt of a certified copy of this order. In case the opinion of the Medical Board is positive, payment be made to the petitioner from the date the notification came into force.”

Brief facts need to be noticed are that at the time of undergoing a training course for promotion to the post of ASI/ Exe at Regional Training Centre (RTC), Barwaha, the writ petitioner (Sahib Singh), who was then Head Constable, sustained spinal cord injury. Eventually, he was invalidated from service being declared as 100% disabled. Claiming grant of CAA, which was rejected by the appellants-Union of India, the writ petitioner filed CWP No.337 of 2007. While disposing of the said writ petition vide order dated 03.02.2017, learned Single Judge had directed the appellants to consider the case of the writ petitioner as per law. Vide order dated 28.04.2017 (Annexure A-2), the claim for grant of CAA to the writ petitioner has again been rejected on the ground that the injury sustained by him has not been attributable or aggravated by service, hence the case of the writ petitioner was held to be not covered by para 2(i) of the notification/instructions dated 16.04.2009 (Annexure A-3).

Feeling aggrieved against the administrative order dated 28.04.2017 (Annexure A-2), writ petitioner preferred Civil Writ Petition No.97 of 2018, which has been allowed vide impugned order dated

05.12.2019 (Annexure A).

Hence the present *intra* court appeal.

The sole argument of learned counsel for the appellants-Union of India is that the physical disability of the writ petitioner occurred due to his own negligence as he took a wrong short cut way i.e. rear window to go to the toilet and sustained injury.

The claim of writ petitioner for granting the benefit of CAA is based on account of insertion of Rule 9A in para 2(vi) of the Central Civil Services Rules, 1939 in a notification which was issued on 15.02.2011. The same reads as under:-

“(vi) after rule 9, the following shall be inserted namely:-

9A. the pensioners who are drawing disability pension under the provisions of rule 9 for 100% disability and are completely dependent on others for day to day activities, shall also be granted in addition to disability pension, the Constant Attendant Allowance in accordance with the instructions issued from time to time.”

Learned counsel for the Union of India does not dispute that it is one of the conditions for granting CAA that the writ petitioner should be drawing a disability pension to the extent of 100% and be completely dependent on others for day to day activities. Admittedly 100% disability pension was granted to the writ petitioner on the basis of opinion of the doctors but the claim for granting CAA was denied by the competent authority.

In the office memorandum/instructions dated 16.04.2009 (Annexure A-3), following provisions have been made for payment of the

Constant Attendant Allowance (CAA) which are as under:-

“2(i) Constant Attendant Allowance (C.A.A.) will be applicable to cases where the disability for which Constant Attendance Allowance is payable is attributable to or aggravated by service.

(ii) Constant Attendant Allowance (C.A.A.) may be granted to a Government servant who is awarded a disability pension for 100 percent disablement, if in the opinion of the medical board, he needs the services of a constant attendant for at least a period of three months, and the necessity arises solely from the condition of the accepted disability or disabilities.

(iii) Constant Attendant Allowance (C.A.A.) shall not be payable for any period during which the pensioner is an inmate or an in-patient of a Government institution or hospital.

(iv) Payment of Constant Attendant Allowance (C.A.A.) shall be made along with disability pension. Payment shall be made on the basis of declaration as in Annexure which shall be submitted to the Pension Disbursing Authority in May & November each year.

After a careful perusal of the above-said provisions, we do not find any illegality or infirmity in the impugned order passed by the learned Single Judge as the injury is attributed or aggravated by service as the writ petitioner was deployed for undergoing a training course for promotion. Once the specific words used in para 2(i) of the office memorandum referred to above (Annexure A-3) are 'attributable to', it cannot be said that the injury in the instant case was suffered due to alleged negligence of the respondent. Further, rule does not make any distinction between the injury attributed to his own cause or on account of the service. Concededly he was a trainee which was an essential part of the service. Denial of CAA in the present case when 100% disability pension has been granted, would certainly amount to travesty of justice. The poor person has been suffering

since long on account of no fault on his part

In view of the above, we do not find any merit in the instant *intra-court* appeal and the same is dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

19.03.2020
mks

Whether speaking/reasoned:	Yes / No
Whether Reportable:	Yes / No