

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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Date of Decision: 20.04.2023.

(1)

CWP-2382-2018 (O&M).

SUNNY KUMAR @ TONI

.. Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

(2)

CWP-13489-2018 (O&M).

JASBIR SINGH AND ANOTHER

.. Petitioners

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

(3)

CWP-26568-2022 (O&M).

KHEM RAJ

.. Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sandeep Arora, Advocate,
for the petitioner(s) in CWP-2382-2018
and CWP-26568-2022.

Mr. Rakesh Sobti, Advocate,
for the petitioners in CWP-13489-2018.

Mr. Deepanjay Sharma, DAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The present three writ petitions are being decided by a common judgment as the petitioner(s) in the above said writ petitions are seeking the relief of being provided suitable appointment in reciprocation of an act of bravery rendered by petitioner/father of the petitioner by informing terrorist movement to Police Station Narot Jaimal Singh in District Pathankot, averting a terrorist attack.

Replies by the respondents-State had been filed in CWP No.2382 of 2018 titled as 'Sunny Kumar @ Toni Vs. State of Punjab and others,' and CWP No.13489 of 2018 titled as 'Jasbir Singh another Vs. State of Punjab and others.'

No separate reply was, however, filed in CWP No.26568-2022 titled as 'Khem Raj Vs. State of Punjab and others.' The said writ petition was ordered to be heard along with CWP-2382-2018 titled 'Sunny Kumar @ Toni Vs. State of Punjab and others.'

Facts noticed from CWP-2382-2018 titled 'Sunny Kumar @ Toni Vs. State of Punjab and others' are extracted as under:-

The petitioner is 32 years of age having academic qualifications of 10+2 as a regular student and Graduation through the Distance Education Mode as well as possessing Diploma in Elementary Teacher Training Education. The petitioner belongs to village Ratrwan which is situated on the outskirts of Border area of Pathankot. On 24.04.2010, the petitioner saw two Pakistani militants along with arms who were wandering in search of suitable escape route from village Mirzapur, Tehsil Pathankot, District Gurdaspur. They captured the petitioner to show them shortest route to the nearest railway station. Finding their activities

suspicious, the petitioner put them away on a false pretext and immediately informed the Sarpanch of the village as well as other prominent persons about the presence of the militants. Information was immediately conveyed to the police who set up a barrier and in an encounter that took place on 25.04.2010, both the said militants were ambushed. Heavy cache' of arms and explosives was recovered from the militants. Case FIR No.25 dated 25.04.2010 under Sections 302 and 307 of the Indian Penal Code read with Section 25 of the Arms Act and Sections 3, 4 and 5 of the Explosive Substances Act, was registered at Police Station, Narot Jaimal Singh qua the encounter. The petitioner claims that terrorist incident could be averted only on account of an exemplary act of courage and bravery displayed by the petitioner risking his own life and that of his own family members and had the information not been furnished by the petitioner, much damage could have been caused by the militants through their nefarious designs.

The petitioner thereafter submitted an application to the Senior Superintendent of Police, Gurdaspur, averring that he was jobless and having family responsibilities to discharge. The request was thus made for being appointed as Class IV employee in the State Government. Vide his letter No.13061-CD dated 03.05.2010, the Senior Superintendent of Police, Gurdaspur, recommended the case of the petitioner for appointment as a Class IV employee in the State Government, as a special case, to the Deputy Commissioner. The same was forwarded by the Deputy Commissioner to the Principal Secretary, Department of Home Affairs, Government of Punjab on 13.05.2010. Vide letter dated 08.06.2010, addressed by the Director General of Police, Punjab, it was mentioned that various

officers/civilians have been enlisted as Constables and that necessary approval for enlistment of the petitioner as Class IV employee in the Police Department has been accorded. Despite such recommendation and enlistment, an appointment was not given to the petitioner. He checked the issue with the respondent Authorities and was informed that certain similarly situated persons have filed writ petitions before the High Court and that the Authorities would take a collective decision after the judgment of the High Court. It is further averred that the said Jagdish Raj, who had filed the writ petition before the High Court had been given job by the State Government. The writ thus became infructuous. Notwithstanding that the petitioner was similarly situated, he was not offered appointment by the respondents.

Reply by way of an affidavit had been filed by the Deputy Superintendent of Police (Headquarters), Pathankot, wherein the above facts and communication was not disputed however, it was informed that the claim of the petitioner was filed as there was no reference to any Rules/Instructions under which the case of the petitioner could be considered. Same was accordingly rejected by the Government of Punjab, Department of Home Affairs and Justice vide Memo No.1/36/10/IG/4/3792 dated 11.11.2010.

Even though the above said reply was filed on 09.09.2018, however, no rejoinder/replication to the same was filed by the petitioner. The matter was thereafter taken up on 24.02.2020 when it was urged on behalf of the petitioner that similarly situated persons as the petitioner have been appointed as Constables with the Punjab Police. The State of Punjab was directed to file an affidavit of the competent Authority explaining the

manner, grounds and the policy under which appointment was afforded with a specific reference to the persons as reflected in Annexures P-3 and P-4 in CWP No.13489-2018.

In compliance to the above said order, an additional affidavit was filed by Manoj Kumar, PPS, Superintendent of Police (Headquarters), Pathankot, which reads thus:-

“4. That the person mentioned in the Annexure P-3 and Annexure P-4 of the CWP No. 13849 of 2018 were given govt. appointments as they have shared valuable, material and relevant information in time with police and courage shown by them during the terrorist movements. As per order dated 11-07-2017 issued by the office of Director General of Police, Punjab, Soma Devi mother of Sh. Basant Kundal and Pawanpreet Kaur wife of Sukhwant Singh shared valuable and material information about terrorist movement in the area with the police without caring for their lives and that of their family members and therefore they were given appointments in government service being directly involved in the action. A copy of the order dated 11-07-2017 is annexed as ANNEXURE R-2. The Petitioner- Sunny was not given job as he has not directly participated or involved in any act related with the encounter of terrorist with the Police as per letter of Senior Superintendent of Police, Gurdaspur Office vide No. 36916/AHC dated 27-10-2016. A copy of the letter/order dated 27.10.2016 is annexed as ANNEXURE R-3. It is pertinent to mention that on similar & identical grounds CWP No. 24649 of 2016 was filed by one Surjit Kumar for claiming appointment on the basis that his father namely Sh. Karam Chand, Deputy Superintendent of Police (Retd.) Sub Division Pathankot participated in the said terrorist encounter but the said writ petition was dismissed, as the father of Sh. Surjit Kumar was not directly involved in the encounter as he reached at the place of occurrence of the encounter with the

more police force when the encounter was over. A detailed reply has been already been filed in the present writ petition on 09-09-2018.”

The above said additional affidavit was filed in August 2020 and no counter affidavit/additional affidavit had been filed on behalf of the petitioner even to the same despite lapse of more than 2½ years.

It is thus the specific case of the respondent State that the petitioner had not played any prominent role; direct involvement or participation; or shown any exemplary courage and that the claim of the petitioner had already been rejected vide Memo dated 11.11.2010. Even though the above said order had been appended along with the written statement filed in the year 2018, however, the petitioner chose to not raise a challenge to the said order whereby his claim had been rejected either in the writ petition when it was filed in the year 2018 or even after the reply had been filed by the respondent.

In so far as the case of petitioner Khem Raj in CWP No.26568 of 2022 is concerned, he has challenged the order dated 19.07.2022 (Annexure P-8) whereby the claim of the petitioner for appointment had been rejected ignoring the act of bravery in counter insurgency shown by his father. A perusal of the said impugned order shows that his representation for recruitment had been considered and filed by the Senior Superintendent of Police, Gurdaspur. It was also noticed that the father of the petitioner along with other persons had only informed the police party about the incident and they had no active role.

The petitioner has not been able to refer to any policy/instructions issued by the State of Punjab for considering his claim

for appointment exercising writ of mandamus. Any discrimination can be alleged or pleaded only when the authorities are enjoined upon by law to act/omit from doing in any particular manner. In the absence of any policy/instructions of the State Government, the plea of discrimination cannot be accepted merely because the State Government offered appointment to certain persons who had actively helped the police as distinguished by the authorities. Such solitary instances cannot confer a right on the petitioner to be offered similar appointment albeit it may be a cause to examine the legality of offering an appointment to other persons. However, there is no occasion to examine the appointments already made by the State Government at this belated stage after a lapse of more than a decade more-so when there is no challenge to their appointment.

Faced with the above and in absence of any policy/instructions by the State Government as well as failure to challenge the order whereby the representation of the petitioner was filed, the counsel for the petitioner in CWP No.2382 of 2018 and CWP No.13489 of 2018 submits that he would not press these petitions at this stage so as to take recourse to the remedies available to him in accordance with law, if so advised.

Accordingly, CWP No.2382 of 2018 and CWP No.13489 of 2018 are disposed of as not pressed, at this stage with liberties as aforesaid. The writ petition bearing CWP No.26568 of 2022 titled as 'Khem Raj Vs. State of Punjab and others' is dismissed as the petitioner has failed to point out any policy/instructions/guidelines or rules and regulations framed by the respondents whereunder the claim of the petitioner ought to have been considered. Besides, the petitioner has also failed to raise a challenge to the rejection of his claim earlier, as mentioned in the report of the Senior

Superintendent of Police, Pathankot, vide No.57259/EB dated 01.11.2020. Without raising any challenge to the said order rejecting the claim by the Senior Superintendent of Police, Pathankot, the petitioner had preferred CWP No. 10400 of 2022 which was disposed of with a direction to the respondents to consider the claim. The impugned order dated 19.07.2022 (Annexure P-8) specifically notices that claim had already been dismissed on an earlier occasion. The subsequent letter cannot give rise to a fresh cause of action without challenge to the earlier order whereby his claim had been filed when the second communication only conveys rejection because of the earlier order.

Even otherwise, for alleging discrimination, there has to be a regulatory framework that would create a right in the petitioner to claim the relief asked for. Conferring any benefit on any other person, under any special circumstances of that case, cannot per se give rise to an arbitrary discrimination.

Finding no legal basis or regulatory framework under which any such direction could be issued, the present petition is misconceived and lacks merits.

The same is accordingly dismissed.

A photocopy of the order be placed on the files of connected cases.

April 20, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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