

# SUPREME COURT OF INDIA

Union of india & anr.

Vs.

Babu lal yadav

C.A.No.1467 of 2008

(A.K.Mathur and Altamas Kabir,JJ.)

21.02.2008

## ORDER

(Arising out of SLP(Civil) No.9330 of 2006)

1. We have heard learned counsel for the parties.
2. Delay condoned.
3. Leave granted.
4. This appeal is directed against the judgment and order dated 11th november, 2005 in d.b.civil special appeal (w) no. 290 of 2003 passed by the division bench of the high court of rajasthan at jaipur whereby the division bench has affirmed the order of the learned single judge. Learned single judge has reduced the punishment of dismissal from service to the stoppage of six grade increments with future effect. Learned single judge further directed that 50% of back wages be also paid from the date of filing of the writ petition. The facts of the case are that the respondent herein was appointed as constable in the border security force on 13th june, 1975. Thereafter he was promoted from time to time. He remained absent for a long time. Therefore, a notice was issued to him but he did not respond and ultimately, he was removed from service. This removal was challenged by the respondent (herein) and the learned single judge having regard to the facts and circumstances of the case modified the order of removal from service to the withholding of six grade increments with future effect and awarded 50% of backwages.
5. Aggrieved against this order, the union of india filed a letters patent appeal before the division bench. The division bench affirmed the order of the learned single judge. The division bench observed that the appellant herein was aware that the respondent was not keeping well and was also aware about the extension of his leave on medical ground from time to time. Having regard to this consideration, the division bench affirmed the order of the learned single judge. Having regard to the facts and circumstances of the case and that the litigation is going on from a very long time and the respondent is almost on the verge of

retirement, we are not inclined to interfere in this appeal. However, we modify the order of the division bench to the extent that the respondent will not get the benefit of payment of 50% backwages from the date of filing of the writ petition as this misery has been invited by respondent himself.

6. Be that as it may, we are not interfering in this appeal, but we modify the order of the division bench to the extent that the punishment recorded by the learned single judge and affirmed by the division bench of the stoppage of six grade increments with future effect is maintained but he will not be entitled to any benefit of backwages whatsoever. This is because of the fact that the incumbent is almost reaching at the age of superannuation. Therefore, looking to these facts, we affirm the order of the division bench with the modification that he will not be entitled to any benefit of backwages. However, this will not affect the retiral benefits of the respondent.

7. The appeal is accordingly, disposed of.

8. The stay order passed by this court on 11th may, 2006 is vacated.