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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-11478-1999 (O&M)
Date of decision: 15.01.2025

Behari Lal

... Petitioner

vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. RK Arora, Advocate for the petitioner.
Mr. Satnam Preet Singh, DAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition for direction to declare the action of respondent authorities not allowing the benefit of military service rendered in first emergency as he joined the Indian Army on 20.12.1963.
2. Learned counsel submits that the petitioner is claiming only for increment and pension as he had given up the claim qua seniority by filing an affidavit dated 10.09.1999 vide CM-21788-CWP-1999. He states that case of the petitioner is squarely covered by the judgment passed in **Balwant Singh vs. State of Punjab and others**, CWP-9062-1994, decided on 10.05.2013, against which LPA-1474-2013 was also dismissed on 18.03.2014 so also the SLP on 18.05.2015, which learned State counsel despite his best efforts, has not been able to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law, relevant extract of the

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judgment in **Balwant Singh** (supra) reads thus:-

“6. Admittedly, in view of 1965 Rules, the petitioner was entitled for the benefit of counting of Military service for increments, seniority and pension. The said benefit was denied to him solely on the ground that before his services could be regularized w.e.f. 01.04.1985, the 1965 Rules were repealed and the 1982 Rules had come into force w.e.f. 12.02.1982. The petitioner had, thereafter, approached this Court and during the pendency of the present petition, the amendment in the 1982 Rules w.e.f. 11.02.1982 had been made. Under the said Rules, there were only benefit of reservation of seats to the tune of 15% initially. However, vide amendment dated 08.06.2004, the period of Military service from 26.10.1962 to 09.01.1968 was to be counted for the purposes of increments and pension. The relevant Rule 8-A reads as under:

“8-A, Increments and pension – Period of military service rendered during the First National Emergency from 26th October, 1962 to 9th January, 1968 shall count for increments and pension as under :-

(i) **Increments** - The period spend by a person on military service (restricted to emergency period from 26th October, 1962 to 9th January, 1968) after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count for increments. Where no such minimum age is prescribed the minimum age shall be as laid down in Rules 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules Volume II. This concession shall however, be admissible only on first appointment.

(ii) **Pension** - The period of military service mentioned in clause shall count toward pension only in the case of appointments to permanent services of posts, subject to the following conditions:-

(1) The person concerned should not have earned a pension under military rules in respect of the military service in question.

(2) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government.

(3) The period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of the Government.

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This benefit shall be applicable to all those who were appointed in Government services before or after 11th February, 1982.”

7. Thereafter, Rule 8-B was added w.e.f. 10.04.2012 wherein the benefit of Military service was restricted to the appointments against the reserved vacancies. Rule 8-B reads as under:

“8-B. Increments and pension – Period of military service rendered during the Second National Emergency from 3rd December, 1971 to 25th March, 1977, shall count for increments and pension as under :-

(a) **Increments** - The increments for the aforesaid service shall be paid to those persons only, who joined and rendered service during the aforementioned period. This benefit will, however, be given only at the time of making first appointment on regular basis on a civil post or service under the Government. However, these increments will be taken into account when the pay of a person is subsequently fixed on account of his promotion, selection, new recruitment or revision of pay scale or otherwise;

(b) **Pension** - The period of military service, referred to above, shall count towards pension only in case of an appointment to a permanent post under the Government, subject to the following conditions namely:-

(i) The person concerned should not have earned a pension under military rules in respect of the military service in question;

(ii) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government, and;

(iii) The period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of the Government.

“These benefits shall be available to all the persons who were appointed in Government Service against reserved vacancies and were in Service as on 1st December, 2011 or are appointed thereafter:

Provided that these benefits shall be admissible for pay fixation on notional basis with effect from 1st January, 2012 and arrears on account of pay shall not be paid.”

8. A perusal of Rule 8-A would, thus, go on to show that the benefit of Military service, which had been initially granted under the 1965 Rules and withdrawn in view of the un-amended 1982 Rules, was restored for the purpose of increments and pension in the case of appointment to the permanent posts. The

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Rule further provided that all these benefits were admissible to all those employees who were appointed before or after 11.02.1982. Vide the impugned order dated 24.04.1990 which was subsequently up held on 04.10.1992, the case of the petitioner was rejected on the ground of repeal of Rules and in view of the fact that the 1982 Rules did not provide any such benefit of Military service. However, once the Rules have been amended and benefits have been restored, the petitioner would necessarily be deemed to be entitled for the said benefit, as per the Rules, for the purposes of counting his Military service from 19.01.1963 to 09.01.1968. The submission of the State that the petitioner was not appointed against a permanent post and therefore, was not entitled to the benefits under the Rules is of no avail as admittedly, the appointment letter dated 29.09.1981 resulted into regularization of service of the petitioner w.e.f. 01.04.1985, as per the case of the respondents themselves. Once the petitioner was regularized, having been appointed through the employment exchange, it would not be open for the State to contend that the appointment was not against a permanent post and the petitioner was not entitled for the benefits. The said Rules are for the benefit of the Ex-Servicemen who had, at that point of time, joined Military services, keeping in view the threat to the Nation and in the wake of the Chinese aggression.

9. A Division Bench judgment of this Court in **Sumer Singh's** case (supra) held that the ad hoc period of service rendered by the petitioner which was followed by regular service was liable to be considered for the purpose of fixing the pension after taking into account the Military service rendered during the period of emergency, keeping in view the observations of the Full Bench judgment rendered in **Kesar Chand, resident of village Naroli Vs. State of Punjab & others AIR 1988 (P&H) 265**. Similarly, in **Tej Ram Vs. State of Haryana 2011(2) RSJ 565**, this Court, while granting the benefit to the petitioner, held that persons who had been appointed on ad hoc basis and subsequently regularized were also entitled to reap the military benefits. Relevant observations reads as under:

“15. As rightly pointed out by the learned Counsel appearing for the petitioner, neither Rule 4(i) of the Punjab Government National Emergency (Concessions) Rules, 1965 nor the clarification issued by the Chief Secretary to the Government of Haryana vide proceedings No.12/14/84-2GS-II speaks of employment in “regular service” so as to get the benefits under Rule 4 of the Punjab Government National Emergency (Concessions) Rules, 1965. A person who had put in military service as per the definition under Rule 2 and the clarification given by the Chief Secretary employment in “service or post” of the Government is required to reap the military benefits. A

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person who has been appointed on Adhoc basis is also under the service of the Government. Even otherwise there is no dispute to the fact that the service of the petitioner has been regularised. For the reasons best known neither the petitioner nor the respondents would come out with the actual date on which the service of the petitioner was regularized. When Rule 4(i) of the Punjab Government National Emergency (Concessions) Rules 1965, does not contemplate either regularised service or permanent service, the petitioner, who has been in the government service long prior to the amendment introduced to the definition military service cannot be deprived of the benefits accrued to him.

16. In view of the above, the impugned order passed by the respondents dis-entitling the petitioner from the military service benefits on the sole ground that he entered into government service only on Adhoc basis, does not stand legal scrutiny. Therefore, the impugned order is liable to be quashed. Accordingly, the impugned order passed by the respondents stands quashed and a direction is issued to the respondents to grant the military benefits alongwith consequential benefits to the petitioner, as per Rule 4(i) (ii) and (iii) of the Punjab Government National Emergency (Concessions) Rules, 1965.”

10. Resultantly, keeping in view the said observation in mind, it is held that the petitioner is entitled to count the Military service rendered from 19.01.1963 to 09.01.1968, for the purpose of pension. Accordingly, orders dated 24.04.1990 and 04.11.1992 are quashed and a direction is issued to the respondent-State to grant the benefit of the said period to the petitioner for the purpose of calculating his pension. Necessary consequential benefits be paid to the petitioner within 2 months from the date of receipt of a certified copy of this order on his complying with the conditions laid down in Clauses 1 & 2 of Rule 8-A(ii) of the 1982 Rules, as amended.

11. Writ petition is, accordingly, allowed in the above-said terms.”

3. Relevant portion of judgment in LPA-1474-2013 reads thus:-

“CM No. 3756 of 2013

After hearing counsel for the parties, application is allowed. Delay of 19 days in re-filing this appeal stands condoned.

LPA No. 1474 of 2013

Vide the impugned judgment dated 10.5.2013, the appellant was held entitled to count services rendered by

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him during National Emergency from 19.1.1963 to 9.1.1968, for the purpose of pension.

At the time of arguments Mr. Jagpal Singh, Advocate, fairly states that grievance remains only with regard to grant of benefit of increments as per the Rules, for the service rendered during first emergency i.e. between 19.1.1963 to 9.1.1968.

To the relief claimed possibly Mr. Gaurav Garg Dhuriwala, DAG, Punjab cannot raise any objection as this entitlement clearly flows from the rules known as the Punjab Government National Emergency (Concession) Rules, 1965.

In view of above, this appeal is disposed of and it is directed that in addition to the pensionary benefits, the benefit of increments, for the period referred to above, be also given to the appellant.”

4. In wake of the above, the present petition is disposed of in terms of the judgment passed in **Balwant Singh** (supra).

(AMAN CHAUDHARY)
JUDGE

15.01.2025
ashok

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