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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

103-2

Date of decision: 15.01.2025

CWP-15705-2011 (O&M)
Ajaib Singh vs. State of Punjab and others

CWP-10946-2000 (O&M)
Om Parkash vs. State of Punjab and others

CWP-23052-2012 (O&M)
Nishan Singh vs. State of Punjab and others

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. These cases involve similar issues and therefore, are being disposed of together.
2. Prayer made in the present petitions for direction to declare the action of respondent authorities not allowing the benefit of military service rendered in second emergency as they joined the Indian Armed Forces in the years 1965, 1963 and 1967.
3. Learned counsel submits that case of the petitioner is squarely covered by the judgment passed in **Raj Kumar vs. State of Punjab and others**, CWP-80-2014, decided on 27.02.2017, against which LPA-1287-2017 was also dismissed on 24.09.2024 and the said judgment has since been implemented, which learned State counsel despite his best efforts, has not been

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able to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law, relevant extract of the judgment in **Raj Kumar** (supra) reads thus:-

“I have heard the learned counsel for both the parties and have carefully gone through the case file.

Rule 8 (B) as amended vide notification dated 15.10.2009 is reproduced as under:-

“Rule 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 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.”

Clause (b) of the said Rule shows that the period of military service rendered during the second national emergency has to be counted for increments and pension. For increment there are conditions laid down in Clause (a) and for the purpose of pension the conditions laid down Clause (b) of the Rules, 1982.

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Learned counsel for the petitioner states at Bar that the petitioner has not earned any pension under the military rules and that he is also willing to deposit the amount of gratuity or bonus so received by him. Therefore, in terms of the Rule 8 (b) of the Rules, 1982, the services of the petitioner rendered during the second national emergency are liable to be counted as qualifying service for the purpose of pension subject to the petitioner depositing the bonus or gratuity received by him with the respondent department with interest as per government instructions. Mere fact that the petitioner was discharged on extreme compassionate grounds before the emergency ceased to exist is not a ground to decline to compute the said military service as a qualifying service for the pension.

It being so, the impugned letter dated 23.12.2013 (Annexure P-3) is hereby set aside and on the deposit of said bonus or gratuity, granted to the petitioner under the military Rules, with interest, the services of the petitioner rendered during the second national emergency are ordered to be counted as qualifying service for grant of pension and other service benefits.. Accordingly, after adding the said service, pension of the petitioner shall be recalculated and the revised pension and other pensionary benefits shall be paid to the petitioner.

Since, the petitioner approached this Court by way of filing of this writ petition, in the year 2014, therefore, the petitioner will not be entitled for any interest on the arrears from the date of his retirement i.e. 31.07.2005 till the date of filing of the present writ petition i.e. 08.01.2014. Thereafter, interest on the delayed payment of retiral dues shall carry interest @ 9% per annum till the date of actual payment.

In view of the above, the petition stands allowed.”

4. Relevant portion of judgment in LPA-1287-2017 reads thus:-

“7. We have heard learned counsel for parties and have gone through the file with their able assistance.

8. The factual aspect as narrated above is not in dispute. It is a matter of record that writ petitioner was in service at the time of start of Second National Emergency i.e. 03.12.1971. Relevant and applicable provision i.e. Rule 8B(a) and (b) of Punjab Recruitment of Ex-serviceman Rules, 1982 as amended on 15.10.2009 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:-

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a) Increments - The increments for the aforesaid service shall be paid to those persons only, who joined and rendered service during the afore mentioned 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; and

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 Government.

(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 as per orders of the Government.”

9. Perusal of Rule does not reveal any such bar for release of benefit for the period of second National Emergency for which the employee served. There is no such stipulation that proportionate benefit in question cannot be released to a person who has not completed service for the entire period from 03.12.1971 to 25.03.1977.

10. Argument that the benefit would be available to the employee only if he had joined Armed Forces during the period in question, is devoid of any merit especially keeping in view the order dated 13.11.2014 passed in CWP17661-2013. Controversy sought to be raised in any case is no longer res integra, keeping in view the decision of Hon'ble Supreme Court in Raj Pal Sharma and others versus State of Haryana 1985 AIR SC 1263, wherein it has been categorically held that mere factum of employee being released from military service on compassionate ground cannot disentitle him from the benefit in question.

11. Learned counsel for appellant is unable to point out any infirmity or irregularity in impugned order dated 27.02.2017 which calls for interference.

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- 12. No other argument has been raised.
- 13. In the given facts and circumstances as above, impugned order dated 27.02.2017 is upheld. Appeal is, accordingly, dismissed being devoid of any merit.
- 14. Pending application(s), if any, stand(s) disposed of.”

- 5. Learned counsel for the petitioner submits that the similarly situated employee has been granted benefit vide endorsement No.421-422/ECC dated 25.01.2024 by the General Manager, Punjab Roadways, Amritsar-I based on the judgment in CWP-17661-2013 titled as **Rajinder Singh vs. State of Punjab and others**, decided on 13.11.2014.
- 6. In wake of the above, the present petitions are disposed of in terms of the judgment passed in **Raj Kumar** (supra).
- 7. Photocopy of this order be placed on the connected files.

(AMAN CHAUDHARY)
JUDGE

15.01.2025
ashok

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