

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

CWP-17300-2012 (O&M)
Date of decision : 19.05.2015

Surinder Pal

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Kapil Kakkar, Advocate for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab

JITENDRA CHAUHAN, J. (Oral)

The petitioner seeks issuance of a direction to the respondents to grant the benefit of increments for his services rendered during the First and Second National Emergency.

The learned counsel for the petitioner contends that the petitioner was inducted in the military service on 30.04.1966. He states that the case of the petitioner is squarely covered by the ratio of law laid down by the Division Bench of this Court in Sukhdev Singh Vs. State of Punjab and others, bearing CWP No.20061 of 2008, decided on 25.11.2009 (Annexure P-12).

Upon issuance of notice, the State has filed reply. As per the reply, one increment in lieu of the military service rendered by him from 30.04.1966 to 09.01.1968, during the proclamation of First

National Emergency has already been granted and the necessary entry has been recorded in his service book. It has further been noticed that other benefits admissible to the petitioner will be released in due course.

The written statement was filed on 20.11.2013, however, nothing has so far been done.

This Court, in Sukhdev Singh's case (supra), has held as under:-

“From the dictum of the aforesaid judgment, it appears that Rule 2 of 1965 Rules took into consideration any further operation of the proclamation of the emergency and, thus, subsequent emergency period from 1971 to 1977 also comes within the scope of the aforesaid rules. It appears that in implementation of the rules aforesaid, the State Government issued instructions dated 23.06.1998. Thus, the pay of the petitioner granting benefit of five increments for the Military Service rendered by him during the second spell of emergency was rightly fixed. The impugned communication Annexures P-3, P-4 and P-5 are in contravention to the rules. It appears that

respondent No.5 while issuing letter Annexures P-4 and P-5, has ignored the aforesaid circumstances. As a matter of fact, the State Government has acted as a Post Office without application of any mind.”

A Division Bench of this Court, while dealing with similar controversy in ***State of Punjab Vs. Malkit Singh, 2011(2) S.C.T. 40***, observed thus:-

*“The learned Single Judge, while relying upon the judgment of the Hon'ble Supreme Court in **Dhan Singh & Ors. v. State of Haryana & Ors., AIR 1991 S.C. 1047** and a Division Bench decision of this Court in **Jaimet Singh v. The District and Sessions Judge, Amritsar, 1995 (2) Services Law Reporter 313**, allowed all the six writ petitions, while holding that the employes, who had joined the armed forces even prior to the declaration of Emergency, would also be entitled to the benefit of military service rendered during the period of Emergency in accordance with Rule 4 of the Rules of 1965. It was held that since the Rules of 1965 have not been amended by the Punjab Government, as amended by*

the Haryana Government in the year 1976, therefore, these employees are entitled to the said benefit.

*In Dhan Singh's case (supra), which was a case from the State of Haryana, amendment in Rule 2 of the Rules of 1965, made by the Haryana Government vide Notification dated 9.8.1976 was challenged, whereby it was provided that for the purpose of these rules the expression 'military service' means enrolled or commissioned service in any of three wings of the Indian Army Forces rendered by a person during the period of operation of the proclamation of Emergency made by the President under Article 352 of the Constitution of India on October 26, 1962 in any of the three wings of the Indian Armed Forces. While upholding the said amendment, the Hon'ble Supreme Court relied upon its earlier decision in **K.C. Arora & Ors. v. State of Haryana & Ors., AIR 1987 SC 1858**, where it was held that if an ex-army personnel had joined the State service prior to the amendment and has been given the benefit of military service rendered during the period of Emergency, though he had joined prior to the declaration of*

Emergency, the Government cannot take away the accrued rights of that ex-army personnel, even by making amendment to the Rules with retrospective effect. While relying upon the judgment of the Supreme Court in Dhan Singh's case (supra), a Division Bench of this Court in Jamiet Singh's case (supra) has taken the view that if a person had joined the Armed Forces prior to the proclamation of Emergency and had continued to serve after its cessation on January 3, 1968, the period of service rendered by him from October 26, 1962 to January 8, 1968 has to be treated as 'military service' and he is entitled to the benefit of that service during the Emergency for the purposes of increments, seniority and pension etc., as admissible under Rule 4 of the Rules of 1965.

The case of the petitioner is squarely covered by the ratio of law laid down in the above noticed judgments. Otherwise also, the claim of the petitioner is acknowledged by the respondents.

In the circumstances, the present petition is allowed and the respondents are directed to release the benefit of grant of second

increment within a period of three months from the date of receipt of a certified copy of this judgment.

Allowed.

19.05.2015

atulsethi

**(JITENDRA CHAUHAN)
JUDGE**