IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

225 **CWP No.17831-2012 (O&M)**
Date of Decision:18.09.2015

AVTAR KRISHAN SHARMA **....Petitioner**

VERSUS

UNION OF INDIA & ORS. **....Respondents**

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. S.K Nehra, Advocate,
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

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P.B BAJANTHRI, J. (Oral)

In this petition, the petitioner has questioned the order dated 14.06.2005 vide Annexure P-5 by which petitioner's claim to count the service rendered in the Indian Army for the period from 10.05.1969 to 10.06.1980 has been rejected. He further, sought for direction to the respondents to count the service rendered in Indian Army towards grant of retiral benefits.

The petitioner is stated to have joined Indian Army on 10.05.1969 and he was discharged from Military Service on 31.12.1979. Thereafter on 06.07.1981 petitioner joined Excise and Taxation Department in the State of Punjab. On 30.11.2003 the petitioner attained the age of superannuation and retired as Joint Excise and Taxation Commissioner.

The petitioner is stated to have been granted seniority and other service benefits while considering the service rendered in the Indian Army for the period from 10.05.1969 to 10.06.1980, which is not disputed by the respondent. Pursuant to the petitioner's retirement, the respondents have settled the retiral benefits of the petitioner while excluding the service rendered in the Indian Army from 10.05.1969 to 10.06.1980. Pursuant to amendment of Rule called "the Punjab Recruitment of Ex-serviceman (2nd Amendment) Rules, 2004 vide notification dated 08.06.2004 Annexure R-1, claim of the petitioner rejected vide order dated 14.06.2005. The petitioner feeling aggrieved by the order dated 14.06.2005 at Annexure P-5 presented this petition.

Learned Counsel for the petitioner submitted that he had rendered service in the Indian Army for the period from 10.05.1969 to 10.06.1980. Thereafter he has joined Taxation Department in the State of Punjab. The service rendered in the Indian Army has been taken note of by the Taxation Department, Government of Punjab and the petitioner has been granted all service benefits including seniority. This was not disputed by the respondents, however, for the purpose of granting retiral benefits the aforesaid service rendered in the Indian Army has been excluded. His main contention is that for the purpose of service benefits like seniority and other monitory benefits, the service rendered in the military has been taken into consideration. Therefore denial of said service for the purpose of granting retiral benefits is highly arbitrary. It is further contended that in the impugned order Annexure P-5 dated 14.06.2005, communicated on 19.01.2009, the respondents are relying on the rules called the Punjab Recruitment of Ex-serviceman (2nd Amendment) Rules, 2004 dated 08.06.2004. The said rules are not applicable to the petitioner for the reasons that sub Rule 1 of Rule 1 read as follows:

"They shall come into force at once."

The petitioner attained the age of superannuation and retired on 30.11.2003. Therefore the aforesaid rule is not at all applicable to the petitioner and as such, the petitioner is entitled to count his service rendered in the military towards grant of retiral benefits.

On the other hand learned counsel for the State submitted that there is no infirmity with the order dated 14.06.2005 since it is in accordance with the rules namely the Punjab Recruitment of Ex-serviceman (2nd Amendment) Rules, 2004. It is further submitted that the said rules were issued on 08.06.2004. However it is applicable to set of the employee, who have rendered military service during the National Emergency from 26.10.1962 and 09.01.1968. In view of the said Rule, the petitioner is not entitled for the relief sought in this petition.

Heard counsel for the parties.

The crux of the matter in this petition is relating to entitlement of counting of military service rendered by the petitioner for the period from 10.05.1969 to 10.06.1980. It is undisputed that the petitioner has been granted military service for the purpose of seniority and other service benefits while he is in service, however denial of the military service towards grant of retiral benefits is highly arbitrary. Moreover the Rules cited by the State counsel vide Annexure R-1 dated 08.06.2004 is in prospective nature. Consequently, the amended Punjab Recruitment of Ex-serviceman Rule, 2004 dated 08.06.2004 has no application to the petitioner's case, who attained the age of superannuation and retired from service on 30.11.2003. For the aforesaid reason impugned order at Annexure P-5 dated 14.06.2005 is set aside and moreover other service benefits including seniority had been granted. The respondents are directed to count the military service rendered by the petitioner from 10.05.1969 to 10.06.1980 and to refix the pension of the petitioner within a period of ten weeks from today and to release the difference amount.

The writ petition is, accordingly, disposed of.

18.09.2015 **(P.B BAJANTHRI)**
PA **JUDGE**