

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

**CWP NO. 24396 OF 2012**

**Date of decision: 5.02.2015**

**Darshan Kumar**

**..... Petitioner**

**versus**

**State of Punjab and others**

**..... Respondents**

**Coram: Hon'ble Mr. Justice Amol Rattan Singh**

**Present:** Mr. G.S.Bal, Sr. Advocate with  
Mr. Ankush Dhand, Advocate  
for the petitioner.

Mr. L.S.Virk, Addl.A.G., Punjab.

**Amol Rattan Singh, J.(Oral)**

The petitioner in this case seeks the benefit of Rule 8(A)

(i) of the Punjab Recruitment of Ex-servicemen Rules 2004, which  
reads as under:--

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

(i) **Increments----** The period spent by a person on military service (restricted to emergency period from 26<sup>th</sup> October, 1962 to 9<sup>th</sup> 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 (i) shall count towards 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.

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

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2. The petitioner had earlier approached this Court, seeking the same relief, by way of CWP No.15070 of 2011, which was disposed of by a co-ordinate Bench on 24.08.2011, by directing the respondents to consider the petitioners' claim as contained in his legal notice dated 20.01.2011 within three months.

A copy of the said notice dated 20.01.2011, is also annexed with the present petition as Annexure P-5.

The issue having, thereafter, been decided against the petitioner, vide order dated 24.01.2012 (Annexure P-7), the said order has been challenged in the present petition.

3. Mr. Bal, learned Senior counsel appearing for the petitioner, submits that the petitioner is not seeking the benefit of

clause (ii) of the aforesaid rule, but only of clause (i), i.e. for grant of increments for the period of service spent by him in the army, during the first emergency, i.e. from 17.12.1963 to 09.01.1968.

The reply of the respondents is blissfully silent on as to why Rule 8-A(i) would not be applicable to the petitioner, as the entire reply is based on the assumption that the petitioner is seeking the counting of his military service towards pension in terms of Rule 8A-(ii). As such, the respondents' stand is that since the petitioner was not appointed to a permanent service in the post, hence the period of military service cannot be counted.

4. The order impugned in the present petition, also rejects the claim of the petitioner on the same ground, i.e. Rule 8-A (ii) (wrongly given as 8A-2 in the order), only stipulates that the benefit cannot be given to those employees as have not been appointed against a regular post.

Though, no doubt, the said order was passed in pursuance to directions given by this Court in CWP No.15070 of 2011 and that order of this Court (Annexure P-6), does speak of grant of pension to P.R. Chowkidars, however, a perusal of the prayer in the headnote of that petition, as reproduced in Annexure P-6, shows that even that writ petition had been filed only seeking the grant of increments and consequent re-fixation of the petitioners' pay, by counting his period of military service during the first national emergency.

5. In reply, learned State counsel has argued on the same lines as the reply filed.

6. Having heard learned counsel for the parties, I do not see how the stand of the respondents is even germane to the issue at hand.

Rule 8-A very categorically deals with two separate issues: (i) increments and (ii) pension.

As already stated, the petitioner is not claiming pension by this petition, in respect of the period spent by him in military service, during the first national emergency. He is only seeking the benefit of grant of increments in pay and the consequential effect on his pension, by counting the said period of military service, in terms of Rule 8-A (i), reproduced hereinabove.

7. First dealing with the contention of the respondents, that the petitioner, being only a temporary Government employee with them, the benefit of Rule 8-A cannot be given to him as it is only available to those appointed to permanent posts; the said contention is a wholly fallacious one, since that condition (of applicability only to permanent posts), is specific only to pensions, which are dealt with in clause (ii) of Rule 8-A (supra).

Clause (i), dealing with grant of increments for the period spent by a person in military service during the period of the first national emergency, does not lay down any condition of such increments being available only to those persons who were appointed to permanent posts in civil service, after such military service.

If the intention of the rule making authority would have been to so restrict even grant of increments for the period spent in

military service from 26.10.1962 to 09.01.1968, Clause (i) of Rule 8-A would have specified to that effect, in the same manner as has been done in Clause (ii), dealing with grant of pension.

The above benefit could, thus, not have been denied to the petitioner and, as a matter of fact, though the petitioner has approached this Court only 25 years after the cause of action in that regard arose to him, when he had joined civil service on 4.06.1980, however, since the said benefit would be otherwise legally due to him in the terms of the aforesaid rule and it affects his monthly pension on a recurring basis, hence the petition, to that extent, is maintainable.

8. Keeping in view the above, this petition is allowed. The petitioner shall be granted the benefit of increments for the period spent by him in military service from 17.12.1963 to 09.01.1968 and his pay re-fixed and pension calculated, accordingly.

After calculation of such benefit, however, the arrears as become due to him, shall be restricted to a period three years prior to the date of issuance of the legal notice dated 20.10.2011 (Annexure P-5).

**5<sup>th</sup> February, 2015**  
Shivani Kaushik/dinesh

**[AMOL RATTAN SINGH]**  
**JUDGE**