

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

CWP-587-2015

Date of decision : 09.04.2015

Mehtab Singh

...Petitioner

V/S

State of Haryana & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjeev Kodan, Advocate
for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana

JITENDRA CHAUHAN, J. (Oral)

This is a Civil Writ Petition under Articles 226 and 227 of the Constitution of India for issuing a writ in the nature of certiorari for quashing of order dated 28.02.2014 (Annexure P-4) and issuing a writ of mandamus directing the respondents to grant the benefit of “Military Service” rendered by petitioner during the National Emergency Period, for the purpose of seniority and other consequential benefits in accordance with the Punjab Government National Emergency (Concessions) Rules, 1965.

It is pleaded in this petition that petitioner joined the Military Service on 09.10.1973 and served till 31.12.1991 when he was discharged. On 03.12.1998 the petitioner was reemployed as a Peon in the office of respondent No.3. The petitioner retired from Haryana Government Service

after attaining the age of superannuation on 30.04.2014. The petitioner submitted a representation to the Director Prosecution, Haryana for granting benefit of Military Services for the purpose of increment, seniority and pension etc. The respondent No.2-Director Prosecution, Haryana rejected the application of the petitioner on 28.02.2014. The petitioner is challenging the impugned order dated 28.02.2014 in this writ petition.

The respondent contested this writ petition on the ground that the present petitioner was not enrolled during the period of emergency from 26.10.1962 to 10.01.1968, therefore, he is not entitled to any benefit. The persons who were enrolled during the emergency period are only entitled to the benefit under the Rules.

I have heard the rival contentions raised by learned counsel for the parties.

Rule 2 of the Punjab Government National Emergency (Concessions) Rules, 1965 defines the Military Services as under:

“2. Definition:- For the purposes of these rules, the expression 'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a warrant officer) rendered by a person during the period of Operation of the Proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training

followed by military service shall also be reckoned as military service."

This Rule has been amended by the State of Haryana vide notification dated 04.08.1976 and the amended Rule 2 is reproduced as under:-

"2. Definition:- For the purpose of these rules, the expression 'military service' means the service rendered by a person who had been enrolled or commissioned during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution of India on the 26th October, 1962 in any of the three Wings of the Indian Armed Forces (including the service as a Warrant Officer) during the period of the said emergency or such other service as may, hereafter be declared as Military service for the purpose of these Rules. Any period of military training followed by military service shall also be reckoned as military service."

In Tej Ram Vs. State of Haryana 2011(5) SLR 269 (Pb & Hry.), this Court has observed 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 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.”

In this case, petitioner joined the Military Service on 09.10.1973 prior to the proclamation of the emergency and discharged from the Military Service on 31.12.1991. It has been held in Tej Ram's case that a person who has been in the military service prior to the proclamation of emergency cannot be deprived of the benefit of the military service, accordingly, the petitioner cannot be deprived of the benefit which has already been granted to the similarly situated persons.

The first national emergency was declared from 20.10.1962 to 10.01.1968

during the Indo-China war and the second emergency was declared on 03.12.1971 which remained in force till 03.07.1977. Therefore, this writ petition is allowed, the order dated 28.02.2014 (Annexure P-4) issued by the Director Prosecution, Haryana is hereby quashed and the respondents are directed to grant the military service benefits for all intents and purposes to the petitioner along with the consequential benefits arising therefrom including the financial benefits which may be released in favour of the petitioner within four months from the date of receipt of certified copy of this order.

09.04.2015

ashok

Whether referred to reporter? Yes/No

(JITENDRA CHAUHAN)
JUDGE