

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

Date of decision: 07.06.2016

CWP No.18589 of 1996 (O&M)

Chain Singh

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

Mr. Subhash Ahuja, Advocate, as Amicus Curaie.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J.

1. Heard Mr. Harkesh Manuja, learned Additional Advocate General, Punjab and Mr. Subhash Ahuja as amicus curaie and the case of the petitioner in absentia but on pleading and the case law involved at the time of filing of the petition and judicial precedents afterward developing the law on the subject. The case has been remanded by the Supreme Court on appeal by the State of Punjab to pass a fresh order after setting aside the orders of the Division Bench dated 29.04.1997 allowing the petition granting the concession of seniority and increments to the petitioner for service rendered by him in the Territorial Army from 1965 to 1976 but restricting the arrears to 38 months preceding the filing of the petition.

2. Mr. Ahuja has commended the following informed and reasoned view to this Court as one which deserves to be accepted on the

subject matter in question, that is, whether the petitioner is entitled to claim the benefit of service in Territorial Army during the period of National Emergency towards tangible benefits in civil service:

3. “In the present writ petition, the petitioner has assailed the validity of order dated 01.08.1996 (Annex P-1) whereby his claim for counting his service rendered in the Territorial Army during National Emergency has been declined by the respondent – State.

4. The brief facts relevant for decision of present case are that the petitioner joined the Territorial Army during the period of the National Emergency on 11.10.1965 and served in 105 Air Defence Regiment (TA) till 19.07.1976. From the discharge certificate issued by the Commanding Officer (Annex P-6), it is evident that he was discharged from Territorial Army on account of not being eligible for absorption in regular army on 19.07.1976. He was paid Rs.2737/- as service gratuity. The total period of his embodied service is 8 years, 11 months and 6 days.

5. After having been discharged from the Territorial Army, he joined service in respondent-State as Clerk - Ledger Keeper in the office of Punjab Roadways, Pathankot recruited through the employment exchange on 22.07.1976 on ad hoc basis which was regularized in the year 1980. At the time of filing of the present writ petition he was working as Senior Clerk when his representation for reckoning his entire service rendered during National Emergency for grant of increments and seniority in terms of Para. 25 of Consolidated Instructions and Rules (regarding Concessions/ Reservations) issued by the Department of Personnel and Administrative Reforms dated 09.07.1963, as reproduced in Para.5 of the writ petition (hereinafter referred to as the ‘1963 - Instructions’) was rejected by the

impugned order on the sole ground that there was no proof that he was recruited against the military quota which is the subject matter of present writ petition.

6. Upon notice, the respondent – State in its reply has taken the sole stand that his case is not covered under the Military Emergency Rules, 1968 as he was not appointed in civil service against military quota as he falls in category of released Indian Armed Forces Personnel by relying upon provisions of Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968. In a nutshell, the categorical stand of the respondent was that he could have been granted benefits of 1965 – Rules, had he been appointed against a post reserved for demobilized armed forces personnel under the 1968-Rules.

7. The claim of the petitioner was examined by a Division Bench of this Court and on unveiling the stand of the State a categorical finding was recorded that it was not shown to Court by respondents that there were any such reserved vacancies for ex-servicemen at the time of his recruitment in Punjab Roadways. By relying upon an earlier Division bench judgment of this Court reported as State of Punjab & others Vs. Pritam Chand, 1980 (3) SLR 802, the writ petition was allowed by holding him entitled to benefits under the Punjab Government National Emergency (Concession) Rules, 1965 with a direction to respondents to grant him concessions of seniority and increments for the service rendered by him in the Territorial Army from 1965 to 1976 by restricting payment of arrears to 38 months preceding the date of filing the writ petition.

8. The above judgment was challenged by the respondent – State in the Supreme Court on a totally different plea that though petitioner was

claiming concessions under Para. 25 of the Consolidated Instructions and Rules regarding Concession/Reservation in State Services for Released Indian Armed Forces Personnel/Ex-servicemen issued by Government of Punjab, Department of Personnel and Administrative Reforms dated 08.07.1963, whereas this Court had granted him benefits under the provisions of the Punjab Government National Emergency Concession Rules, 1965 and as such the case was remanded back to this Court to examine as to which rules would apply in the present case.

9. During the course of arguments, it was pointed out that though the Territorial Army is part and parcel of Armed Forces in view of the provisions of Territorial Army Act, which are in pari materia with the provisions of the General Reserve Engineering Force [GREF], interpreted by the Supreme Court in R. Viswan Vs. Union of India, 1983 (2) SLR 193, still the petitioner is not entitled to the benefits under the 1965-Rules in view of law laid down by a Constitution Bench of the Supreme Court in Sukhdev Singh Gill Vs. State of Punjab & others, 2000 (4) RSJ 507, because he had not served in any of the three wings of Armed Forces as envisaged under Rule 2 of the 1965 – Rules. The case of the petitioner is in fact covered by Para.25 of Consolidated Instructions which provide for counting of service rendered during National Emergency in the Territorial Army for purposes of increments, seniority and pension. A bare perusal of these instructions show that benefits/concessions provided thereunder are not subjected to condition of being appointed against any post reserved for ex-servicemen.

10. Since these 1963 – Instructions mentioned above have not been withdrawn/superseded/altered by any order, rule or legislation by the respondent – State nor it is even a pleaded case of the respondent – State nor

these run counter to any of the provisions of the 1965 – Rules or 1968 – Rules nor can the same be deemed to be repealed impliedly by the 1965 – Rules or the 1968 – Rules as these rules cover cases of only one category of ex-servicemen who have served in any of three wings of Armed forces whereas these 1963 – Instructions cover both categories of ex-servicemen i.e. those who have served in the three wings of the Army as well as those who have served in the Territorial Army during the National Emergency, and therefore the petitioner is entitled to all the benefits under the 1963 – Instructions in view of the law laid down by the Constitution Bench of the Supreme Court in Sant Ram Sharma Vs. State of Rajasthan, AIR 1967 SC 1910 since the instructions do not run counter to the rules and hold the field to benefit persons like the petitioner.

11. So far as the claim of petitioner for similar benefits i.e. increments and seniority for the service rendered during the Second National Emergency based on instructions dated 23.06.1998 issued by the Punjab Government (Annex P-7) is concerned, the same appears to be doubtful because these instructions were issued on the basis of Division Bench judgment of this Court reported as Narinder Nath Sharma Vs. State of Punjab, 1992 (7) SLR 345, which was specifically over-ruled by two Full Bench judgments of this Court reported as Rajinder Kumar, SI Vs. State of Haryana, 1992 (2) PLR 754 and Jang Singh Vs. State of Punjab, 1997 (3) RSJ 464.

12. Since the petitioner has already retired from service during pendency of present writ petition, his embodied service is, otherwise also, countable towards pension under Rule 4.3 read with Rule 4.3-A read with Rule 4.6-A of Punjab Civil Services Rules, Volume – II, subject to

refund/adjustment of service gratuity with simple interest @ 9% per annum in view of law laid down by two Division Bench judgments of this Court reported as State of Punjab Vs. Dr. Kartar Singh Rai, 1998 (3) RSJ 557 and S.S. Puri, IAS (Retd.) Vs. State of Punjab, 2009 (1) RSJ 56.”

13. Having heard the matter at length and considered the view of the amicus on the points involved and the point of view of the respondent – State in the case, I would readily agree with Mr. Ahuja that the 1963 instructions save the petitioner from deprivation of his rights flowing from service rendered in the Territorial Army to the extent of the period of the first emergency towards civil service but not the second for satisfaction of his claims to which extent the petition is dismissed. Consequently, the petition partially succeeds as far as the period of first emergency is concerned and impugned order dated 01.08.1996 (Annex P-1) is set aside on account of suffering from error, with all consequential benefits flowing there from to the extent when monetized will be restricted to 36 months prior to the filing of the petition. The respondents are therefore directed to pass a fresh order within 2 months from supply of certified copy of this order in the light of this judgment and order. The arrears of monetary benefits arising from grant on increments etc. be calculated and paid within the next one month after re-fixation of pension and completion of formalities as may be necessary in accordance with rules.

07.06.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE