

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

**CWP No. 2058 of 1996
Date of decision: 27.2.2016**

Puran Singh ... Petitioner

Versus

State of Punjab & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. GS Bal, Sr. Advocate, with
Mr. Mohan Singla, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, A.A.G., Punjab.

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

RAJIV NARAIN RAINA, J.(Oral)

1. It is not possible for the State to dispute that the petitioner should not be given the benefits under the Punjab Government National Emergency (Concession) Rules, 1965 [for short '1965 Rules'] for the period of service rendered between April 29, 1966 till September 28, 1978 when he was released from Army on compassionate grounds. This means that the petitioner served during the Second Emergency as well i.e. December 3, 1971 to March 27, 1977. The petitioner entered civil service into the office of Deputy Commissioner, Jalandhar on January 4, 1980 as a Clerk i.e. before 1965 Rules were repealed and re-enacted as the Punjab Recruitment of Ex servicemen Rules 1982 (for short '1982 Rules'). The petitioner rights under the 1965 Rules crystallized on entry into civil service and those were available but he was denied the benefit of seniority although he was given benefit of annual increments from

April 29, 1966 onwards. His pay was fixed accordingly. Because of denial of weightage of seniority from 1966, the petitioner could not earn timely promotions on the way. If seniority is to be given to the petitioner w.e.f. 1966 then he would possibly get promotions from the dates when his juniors were promoted. Those promotion orders of juniors have been placed on record as Annex P4 to P-6. Rule 4 of 1965 rules dealt with increments, seniority and pension. The right to seniority claimed by an ex servicemen coming into civil service is prescribed by Rule 4(ii) of 1965 Rules which reads as follows:-

“4(ii) **Seniority**:- The period of military service mentioned in clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.”

2. It is clear that the period of military service of the kind the petitioner rendered has to be taken into consideration for the purposes of determining seniority in civil service. The special rules contain special concessions to special persons who sacrificed their careers to join military service during the First Emergency when India faced grave threat to its sovereignty. The petitioner has retired from service. He claims promotion from the due dates when the juniors were promoted by giving him the benefit of seniority. If such relief is granted to the petitioner, it would increase his pension and the same would have to be refixed by adding the difference of salary and allowances of the two posts and accordingly, the last pay drawn redetermined for purposes of enhanced pension.

3. The State has filed its written statement, followed by another short reply taking the stand that the petitioner is entitled to benefits only of the First Emergency not of the Second Emergency. This is an erroneous view of the law since the word 'Emergency' has been used in 1965 Rules and the expression Military Service has been employed in a broad sense. The proposition was considered by the Division Bench of this Court in **Narinder Nath Sharma vs. State of Punjab & anr.**, 1993 (2) RSJ 173 to hold that Rule 2 of 1965 Rules defines the expression “military service” as service 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, and it shall count for the grant of benefit under these Rules. Since the 1965 Rules have not been repealed till today and are still in force in the State for the last more than quarter of a century [on the date of the decision] the only irresistible conclusion drawn by Court was that if the Emergency had to be declared by the President of India for the second time on 3rd December, 1971 and for that matter is to be declared any time in future also, the service rendered by the Armed Forces personnel during the period of Emergency shall have to be reckoned as military service ipso facto, for the purpose of these Rules. In fact, the definition of the expression “military service” is so broad based and comprehensive, that an enabling provision has been made for all times to come under which the State Government can always exercise its powers only by making a simple declaration. Further, even if such a declaration

is not formally made, the same can be inferred from the intention and action of the State Government. It is not necessary for the grant of the benefit under these rules that every time when necessity arises and an Emergency is proclaimed by the President under Article 352 of the Constitution, the rules must be amended to enable the State to grant benefit to the eligible employees. Mr. G.S.Bal learned Senior counsel places further reliance on the decision of the learned Single Judge of this Court in CWP No.9062 of 1994 (Balwant Singh v. State of Punjab & ors.) rendered on May 10, 2013.

4. After referring to both the 1965 Rules and 1982 Rules and particularly Rule 8-A of the 1982 Rules, which deals with increments and pension, Mr. Bal draws attention to Rule 8-B [as the Amendment in 2012] which prescribes that period of service rendered during the Second National Emergency from December 3, 1971 to March 25, 1977 shall count for increments and pension.

5. In view of above, there appears merit in the contention of Mr. Bal that seniority would also have to be given to the petitioner from the date of entry into Military Service in 1966 and till he was released from the Army to come to civil service. This is the necessary fallout of the concession. If seniority is given retrospectively then it would give a cascading right to the petitioner retrospectively from the dates juniors were promoted, becoming juniors by virtue of retroactive seniority to him. To achieve this fair result, it would be necessary to set aside the seniority list dated November 8, 1995, only qua the petitioner and the order dated January 11, 1996 [Annex P-15] which fixes pay without the

benefit claimed in this petition. Accordingly, this petition is allowed. The State is directed to reconsider grant of promotions w.e.f. the date the juniors were promoted provided that the service record of the petitioner prior thereto is satisfactory and the petitioner is found eligible for promotion in every manner in accordance with law. As a result, the pay and pension of the petitioner is directed to be refixed in the event of favourable orders passed on reconsideration of his case. However, the promotions granted will remain notional and will not affect 3rd parties either serving or retired. The petitioner's name may be inserted at the appropriate places in the seniority list for office record. The arrears of difference in pension and pensionary benefits be recalculated and paid to the petitioner w.e.f. May 1, 2007 when the petitioner retired from service on reaching the age of superannuation. The exercise be completed within 8 weeks of the availability of the certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

27.2.2016
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