

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14360-2008 (O&M)
Date of decision: 30.11.2016

R.S. Dhull

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.D.D.Gupta and Mr.Bijander Singh,
Advocates for the petitioner
Mr.Naveen Sheoran, DAG Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **yes***
- 2. To be referred to the Reporters or not ? **yes***
- 3. Whether the judgment should be reported in the Digest? **yes***

Kuldip Singh, J.

Petitioner has invoked the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India for issuance of writ of mandamus directing the respondents to fix proper pension of the petitioner, seniority and consequential benefits after counting his period from 29.4.1963 to 1.7.1968 rendered in the military service as Emergency Commissioned Officer. He also prays that his paramilitary service from 31.10.1969 to 22.9.1974 rendered as Class-I officer in General Reserve Engineer Force (GREF) be also counted towards service period rendered under the respondents as District Revenue Officer. He further prays that his training period as a Tehsildar from 26.9.1974 to 8.2.1978 be counted towards period qualifying for pension in view of Haryana Revenue (Group B) Service Rules, 1988 and Rule 22 of the Central Civil Service Pension Rules, 1972 and State Government instructions dated 15.10.1971.

Petitioner also seeks quashing of order dated 11.12.1978 (Annexure P4) vide which, his military service from 29.4.1963 to 10.1.1968 only was counted illegally towards seniority and denying the arrears of pay and military service from 11.10.1968 to 1.7.1968 was not counted at all. Petitioner further prays that he be promoted to the cadre of IAS/ HCS against the reserved post under Punjab PCS (Executive) Rules, 1930 and Rules 4, 6 and 7 of IAS (Recruitments) Rules, 1954 and Appointments by Promotion Rules 1955 after taking into account his entire military service.

Petitioner joined in the Indian Army on 29.4.1963 as Emergency Commissioned Officer, when the first emergency was in operation from 26.10.1962 to 10.1.1968 and was released on 1.7.1968. Petitioner again joined paramilitary force known as General Reserve Engineer Force (GREF) as Class I Gazetted Officer through Union Public Service Commission as Civil Officer under the Ministry of Shipping and Transport and Directorate General Border Roads and was equated to the rank of Captain and worked there from 31.10.1969 to 22.9.1974. Thereafter, the petitioner was selected through Haryana Public Service Commission for Haryana Civil Services & allied services on 26.9.1974 against the post of Tehsildar reserved for ex-servicemen. Petitioner remained under training from 26.9.1974 to 8.2.1978. Thereafter, he worked on different posts of revenue department independently like Kanungo and Naib Tehsildar and was getting full pay of Tehsildar during this period. His GPF account was opened w.e.f. 26.9.1974. However, he has been denied benefit of training period from 26.9.1974 to 8.2.1978 i.e. three years four months and 23 days for the purpose of pension. Petitioner claimed that during this period, he was under the control of the respondents and performing the

duties assigned to him and was getting the pay of Tehsildar. Hence, the period of training is liable to be counted as qualifying for pension. Petitioner further claimed that Punjab Tehsildari Rules 1932 were repealed by Rules of 1988. He claims that under the Punjab Government National Emergency (Concession) Rules, 1965 his entire service in the military is to be treated as qualifying for pension under Rule 4. It is further stated that Haryana Government has amended the definition of military service in Rule 2 of the above mentioned rules vide notification dated 9.8.1976 and restricted the benefit of military service upto 10.1.1968. Therefore, the respondents counted the military service of the petitioner from 29.4.1963 to 10.1.1968 for the purpose of seniority and pension vide order dated 11.12.1978 and his date of appointment as Tehsildar was fixed as 27.5.1973 after allowing only one year benefit of military service. Arrears were paid w.e.f. 8.2.1978 and not before that. Said notification dated 9.8.1976 was declared ultra vires in CWP No.6436-37 of 1980 titled Ex.Captain K.C. Arora and another vs. State of Haryana and others AIR 1987 SC 1858. Petitioner further claims that his service in GREF was paramilitary service. It was declared integral part of Armed Forces by the President of India vide letter dated 14.8.1985. Therefore, his service rendered in GREF is also to be counted towards grant of pensionary benefits. Even otherwise, under Rule 4.3 of Punjab Civil Services Rules Volume II, the said service is liable to be counted for the purpose of grant of pensionary benefits.

By referring to previous litigation, the petitioner stated that his ACRs for the years 1978-79, 1980-81, 1982-83 and 1984-85 contained adverse remarks, which were challenged by him in CWP No.2370 of 1987.

As a result of the order passed by the High Court on 2.5.1990, the petitioner

was promoted as District Revenue Officer on 29.9.1991 w.e.f. 15.3.1982. Petitioner was not satisfied with the relief granted to him in the said judgment and filed SLP (C) No.104 of 1992 (C.A. No.4249 of 1992) and vide order dated 12.10.1992, the Hon'ble Supreme Court directed that name of the petitioner be considered for promotion to HCS Executive Branch without taking into consideration the expunged adverse remarks. However, the name of the petitioner was rejected by the Selection Committee. Petitioner filed CWP No.6977 of 1993 before this Court, challenging the order dated 16.12.1992 of the selection committee. The said writ petition was dismissed. LPA filed against the said judgment was also dismissed on 7.9.1994. Thereafter, the petitioner filed SLP (C) No.12722 of 1995 before the Hon'ble Supreme Court on 7.9.1994. During the pendency of the said litigation with the respondents, the petitioner was compulsorily retired in 1993 vide order dated 29.9.1993. The petitioner challenged the order of compulsory retirement in CWP No.7214 of 1993, which was allowed by the learned Single Bench of this Court on 17.10.1996 and the order of compulsory retirement was set aside. Appeal filed by the State against the judgment dated 17.10.1996 was also dismissed. Petitioner attained age of superannuation on 29.2.1996. During the pendency of SLP No.12722 of 1995, the pension was not paid to the petitioner on account of superannuation and on the orders of the Supreme Court, certain directions were given to the State to release the GPF, provisional pension and arrears of pension. However, vide order dated 21.4.1998 the Hon'ble Supreme Court in SLP against the order dated 7.9.1994 passed by Hon'ble Court in LPA No.906 of 1994 refused to interfere in the order of the Division Bench. Since the proper pension was not paid to the petitioner despite the

order of the Supreme Court, therefore, he filed interim application Nos.1 to 9 before the Hon'ble Supreme Court in Civil Appeal No.2165 of 1998 (arising out of SLP No.12722 of 1995) regarding proper fixation of pension. Petitioner has also filed Writ Petition (Civil) No.314 of 2004 before the Hon'ble Supreme Court for including the military service for proper fixation of pension. The said writ petition was dismissed on 23.8.2004 with a direction to approach the appropriate Court or Tribunal. The petitioner filed CWP No.8185 of 2005 before this Court for the same relief, which was withdrawn in the year 2006 on account of interim application No.9 filed in Civil Appeal No.2165 of 1998. Petitioner has also filed two writ petitions in the year 2007 before Delhi High Court for proper fixation of pension. First writ petition was withdrawn and the second petition was dismissed for want of territorial jurisdiction.

In the written statement, the respondents have not denied the litigation. Benefit of military service has been granted only upto the date the emergency remained in proclamation i.e. 10.1.1968. It is not denied that the training period of the petitioner as Tehsildar from 26.9.1974 to 8.2.1978 was not counted for the purpose of pension. However, it was stated that the period of the petitioner as military service till 10.1.1968 has been counted towards pension under the Punjab Government National Emergency (Concession) Rules, 1965, which was notified on 4.8.1976. As the petitioner was under training from 26.9.1974 to 8.2.1978, therefore, his date of appointment was taken as 27.5.1973. It was stated that the service rendered by the petitioner in GREF is not to be counted for the purpose of pension. The other factual position regarding the litigation and superannuation of the petitioner are not disputed. Plea was also taken that

the petition is barred by resjudicata as well as by inordinate delay and latches and is liable to be dismissed.

Pleadings would show that this Court is required to decide the following points, which will be taken up one by one.

1. Whether the entire service of the petitioner from 29.4.1963 to 1.7.1968 is to be counted as military service and he is to be given benefit of the same till 1.7.1968 and not upto 10.1.1968 upto which date first emergency remained in operation for the purpose of retiral benefits?
2. Whether the services rendered by the petitioner in GREF from 31.10.1969 to 22.9.1974 are to be computed for the purpose of pension and other retiral benefits or not?
3. Whether the training period of the petitioner as Tehsildar from 26.9.1974 to 8.2.1978 is to be computed for the purpose of grant of pension and other retiral benefits or not?
4. Whether the petition is barred by resjudicata?
5. Whether the petition is barred by latches?
6. Whether the petitioner is liable to be promoted to HCS and is to be considered for IAS?

1. Whether the service of the petitioner from 29.4.1963 to 1.7.1968 is to be counted as military service and he is to be given benefit of the same till 1.7.1968 and not upto 10.1.1968 upto which date first emergency remained in operation for the purpose of retiral benefits.

It is not disputed that first emergency was in operation from 26.10.1962 to 10.1.1968. It was during this period that on the call of the nation, the petitioner joined Indian Army on 29.4.1963 and served there till 1.7.1968. However, the first emergency remained in operation till

10.1.1968. The period upto 10.1.1968 has been counted by the respondents for grant of service benefits, whereas the period beyond that i.e. upto 1.7.1968 has not been counted. Further, this period has been counted after deducting the training period of the petitioner as Tehsildar. The question whether training period is to be treated as 'service' for the purpose of computing the benefit of pension, is to be decided in the subsequent paragraph. The Punjab Government National Emergency (Concession) Rules were promulgated on 26.7.1965 i.e. the period during which emergency was in operation. The petitioner had joined the service during the proclamation of first emergency and claimed benefit of the said rules of 1965. Rule 4 deals with the increment, seniority and pension. The increment and seniority is not in dispute though for granting the said benefit, the period of training of the petitioner as Tehsildar was excluded which is to be decided in subsequent paragraph.

Rule 4 is reproduced as under:-

“(4) Increment, seniority and pension – period of military service shall count for increments, seniority and pensions as under:-

(i) Increment – The period spent by a person on military service after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count for increment where no such minimum age is prescribed the minimum age shall be as laid down in rules 5, 9, 3, 6 and 3.11 of the Punjab Civil Services Rules, Volume-II. This concession shall, however, be admissible only on first appointment.

(ii) *Seniority-* The period of military service mentioned in clause (1) shall count be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.

(iii) *Pension –* The period of military service mentioned in clause (1) shall count towards pension only in the case of appointments to permanent services or posts under the Government subject to the following conditions.

(1) *The person concerned should not have earned 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.*

Learned counsel for the petitioner has argued that the petitioner did not earn any pension in the army. Under condition no.2 of the said Rule, bonus or gratuity paid in respect of military service by defence authorities shall have to be refunded to the State Government. Learned counsel for the petitioner has stated that he is ready to refund the bonus or

gratuity whatever was received by him. Now, the question would arise as to whether the period during the operation of emergency is to be counted or the entire period served by the petitioner is to be counted. Word 'military service' is defined in Rule 2 of the said rules 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 26 October, 1962 for the purposes of these rules: Any period of military training followed by military service shall also be reckoned as military service.”

The definition shows that military service means the enrolment or commission in any of three wings of Indian Armed Forces rendered by a person during the period of operation of the emergency made by the President of India on 26.10.1962. Therefore, the definition makes it clear that only the service rendered during first emergency is to be counted as military service. Therefore, the respondents rightly counted the military service of the petitioner from 29.4.1963 to 10.1.1968 as military service for the purpose of benefits under Rule 4 of the said Rules. The service beyond 10.1.1968 is not to be counted as military service for the purpose of grant of benefits under said Rule 4. The first question accordingly stands determined.

2. Whether the service rendered by the petitioner in GREF from 31.10.1969 to 22.9.1974 is to be computed for the purpose of

pension and other retiral benefits or not?

Admittedly, the petitioner joined GREF and worked there as such from 31.10.1969 to 22.9.1974. GREF is admittedly, a paramilitary service under the Central Government under the Ministry of Shipping and Transport Border Road Development Board. To determine the nature of service, the petitioner claims that he was selected through Union Public Service Commission for the said post. Letter dated 14.8.1985 (Annexure P5) shows that GREF was treated as integral part of Armed Forces for the purpose of Article 33 of the Constitution of India. Therefore, first of all, GREF was integral part of the Armed Forces and secondly, the service was under Ministry of Shipping and Transport in the Central Government. The petitioner had joined the service about one year and three months after being relieved from the army. When the petitioner was in service of the GREF, he applied for the Haryana Civil Services and Allied Services and as a result of examination conducted by Haryana Public Service Commission, he was selected as A Class Tehsildar and joined as such on 26.9.1974. He left the service in GREF on 22.9.1974, apparently, on account of his selection as a Tehsildar. Though there is no record available at this stage, that the petitioner had applied through proper channel, presumably, on account of lapse of about 24 years before filing of the writ petition, however, the facts and circumstances indicate that the petitioner had left the service in GREF consequent upon his selection as Tehsildar by the Haryana Public Service Commission. The petitioner had superannuated on 29.2.1996. Therefore, the rules applicable at that time are to be considered. The State Government had issued the instructions dated 22.8.1988 (Annexure P4 with the rejoinder) regarding counting of service for the

purpose of pension of employee of the State Government and State Autonomous Bodies seeking absorption in Central Autonomous Bodies and Central Government/ Central Autonomous Bodies respectively and vice versa. In the present case, admittedly, the service in the GREF was not pensionable. Otherwise, service was little over four years and was otherwise not pensionable. The relevant extract from the said instructions, as attracted in the present case, reads as under:-

(A) In case post/ service is pensionable in the new organization.

Where an employee borne on pensionable establishment is allowed to be absorbed in such an organisation, the service rendered by him/ her shall be allowed to be counted towards pension under the new organization irrespective of the fact whether the employee was temporary or permanent in the old organisation. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he/ she retires as a temporary employee in the new organisation he/ she will get terminal benefits as are normally available to temporary employees.

The Government / Autonomous Bodies will discharge their pension liability by paying in lump-sum as a onetime payment the prorata pension/ service gratuity / terminal gratuity and death-cum-retirement gratuity for the service upto the date of absorption in autonomous bodies/ Governments, as the case may be, prorata pension will be determined with reference to the commutation table in chapter 11 of the Punjab Civil

Services Rule, Vol. - II as amended from time to time.

(ii) An employee with Contributory Provident Fund benefits on his/ her permanent absorption in the new organization against a pensionable post/ service will have the option either to receive Contributory Provident Fund benefits which have accrued to him from the old organization or choose to count service rendered in the old organization as qualifying service for pension in the new organization by foregoing employer's share of the Contributory Provident Fund with interest from the old organization which will be paid to the latter by the former organization. The option shall be exercised within one year from the date of absorption. If no option is exercised within the stipulated period, the employee shall be deemed to have opted to receive Contributory Provident Fund benefits. The option once exercised shall be final.

In the present case, since the job of the petitioner in GREF was not pensionable, therefore, his service in the old organization followed by his permanent appointment as a Tehsildar is to be computed for the purpose of grant of pension in view of the government instructions (Annexure P4), as reproduced above.

3. Whether the training period of the petitioner as Tehsildar from 26.9.1974 to 8.2.1978 is to be computed for the purpose of grant of pension and other retiral benefits?

The appointment letter of the petitioner is dated 13.9.1974, whereby he was accepted as Class A Tehsildar candidate on the basis of Haryana Civil Services Executive Branch and other Services Examination

1972-73. Appointment letter is reproduced as under:-

The Financial Commissioner, Revenue, Haryana, is pleased to accept Sarvshri Raj Kumar Aggarwal, Amar Nath, Icchpujani, Ashok Kumar Vashishtha, Kamal Gupta, Hardhul Singh Bholle, Randhir Singh Dhull and Nepal Singh Tanwar, as "A" Class Tehsildar Candidate. The acceptance of Sarvshri Ashok Kumar Vashishtha and Hardhul Singh Bhole is subject to verification of their character and antcedents.

2. *The inter-se-seniority of the above candidates will be communicated to them later.*

3. *The arrangements for their training will be made by the commissioner Ambala and Hissar Division, who are being asked to communicate the programme of training to them. They are allotted to the Commissioners, Ambala and Hissar Division, for training as under:-*

Commissioner Ambala Divn.

Commissioner Hissar Divn

1. *Shri Raj Kumar Aggarwal*

1. *Shri Kamal Kumar Gupta*

2. *Shri Amar Nath Inchhpunjani*

2. *Shri Hardhul Singh Bhole*

3. *Shri Randhir Singh*

3. *Shri Ashok Kumar Vasishta*

4. *Shri Nepal Singh Tanwar*

Chandigarh

4. *The terms and conditions of their service training, passing of departmental examination, probation etc. will be governed by the Punjab Tehsildari Rules, 1932 and the Financial Commissioner's Standing Order No.12 as amended from time to time.*

5. *During the period of their training they shall draw pay at the rate of the minimum of the time scale of the post of Tehsildar of Rs.350-25-500-30-650/30-800 vis. Rs.350/- P.M.*

6. *They are requested to intimate their Home Districts and the districts in which they have property to the Commissioner of the Divisions to whom they have been allotted for imparting training and this department.*

7. *The receipt of this communication may please be acknowledged.*

The above noted letter clearly shows that on the basis of examination conducted by the Haryana Civil Services Executive Branch and other Services Examination 1972-73, the petitioner was selected as Tehsildar in the Ex-servicemen category and he was accepted by the Financial Commissioner as "A" Class Tehsildar candidate. He was required to undergo service training and pass the departmental examination and

probation and his services were governed by Punjab Tehsildari Rules, 1932 and Financial Commissioner standing order No.12. He was to draw the pay at the rate of minimum of the time scale of the post of Tehsildar, which means that as per the appointment letter, the petitioner had joined the Government service and came under the control of the Government. Before actually being posted as a Tehsildar, he was required to undergo some service training which included his working as Kanungo and Naib Tehsildar and pass the departmental examination and clear probation etc. He was paid the salary of the Tehsildar though at the minimum of time scale. In this situation, the petitioner was drawing the salary from the State also. Now, the question would arise whether the period of service training is to be excluded while computing service of the petitioner under the Government? The standing order No.12 of 1909 shows that "A" class candidate was required to be declared qualified within two years of acceptance to undergo revenue training for one year and obtain a Kanungo's certificate of efficiency from the Director of Land Records. After receipt of such training and after obtaining such certificate, he was to serve as a Naib Tehsildar with approval for two years either officiating or in an honorary capacity. He was also required to pass Tehsildar's examination within two years of acceptance. It goes to show that before being actually posted as Tehsildar, the petitioner was required to undergo some revenue training and obtain certificate of efficiency as Kanungo and was also required to serve as Naib Tehsildar. Service of Kanungo and Naib Tehsildar is admittedly under the Government. During the service of the petitioner as Tehsildar, he was later on governed by Punjab Civil Service Rules. The training of the petitioner and clearing of the departmental examination and probation period was

followed by confirmation of the petitioner as a Tehsildar. One failed to understand how the period of training is to be excluded from the service for the purpose of grant of service benefits? Now, when the daily wage workers, work charge service or temporary and ad hoc service followed by confirmation is computed as qualifying for the purpose of pension, then one failed to understand why the service during the training period which is on the basis of regular appointment letter followed by regular posting is to be excluded from the service period of an employee. It also comes out that no fresh appointment letter was issued to the petitioner on 8.2.1978 when he completed the training to indicate that it was a fresh appointment on 8.2.1978. It just happened that the petitioner successfully completed the training and he was given his posting as a Tehsildar.

The matter 'whether the time spent while undergoing training, is to be computed for the purpose of pension' was considered by this Court in Buta Singh vs. State of Haryana and others, (2000)(1)11LIC1270 P&H (CWP No.4962 of 1999), decided on 16.11.1999. In the said case, one Buta Singh was accepted as Naib Tehsildar candidate. His training period from 6.10.1938 to 31.1.1941 was not computed for granting him pensionary benefits. This Court considered submissions of counsel for the petitioner as under:-

“Mr.G.S.Sandhu, learned counsel representing the petitioner vehemently contends that in view of the provisions contained in Rule 4.12-A of C.S.R. Volume II, in respect of Class III and Class IV employees, who are required to undergo departmental training, such period has to be treated as qualifying service for pension. To appreciate the contention of Mr.Sandhu, it will be useful to reproduce the rule on which reliance has been placed. The rule runs, thus:-

“4.12A. In respect of Class III and Class IV employees, who are required to undergo departmental training relating to jobs before they are put on regular employment, training period may be treated as qualifying service for pension, if the training is followed immediately by regular appointment. This benefit will be admissible to all such employees even if they are not given the scales of pay of the post but only a nominal allowance during the training.”

Thereafter, after considering objections of the State counsel, this Court held as under:-

“So far as the objection of State with regard to service record of the petitioner being not available is concerned, it requires to be mentioned here that during the arguments it could not be disputed that for the post on which the petitioner was appointed, undergoing training was a prerequisite. No one could at all be appointed if he had not successfully undergone the training and taken the departmental examination. It is the positive case of the petitioner that he had undergone training and there is no material to refute the said contention. Loss of record by the State cannot be pressed into service to the disadvantage of the petitioner. As mentioned above, if undergoing training for appointment to a job of Naib Tehsildar was a prerequisite, it is presumed that the petitioner must have undergone that training. Payment of stipend is another ground on which it is contended that the petitioner should be denied the relief as asked for by him. It is rather interesting to note it is not even suggested that those who undergo training for ultimate absorption on the post of Naib Tehsildar either by virtue of rules or instructions are not paid any stipend. If that would have been, perhaps, the case of the respondent-State, the matter might have needed further examination. The use of word 'may' in Rule 4.12A of C.S.R. Vol. II has to be read as 'shall' as otherwise it would be the discretion of the Government in the same set of circumstances to deny relief to one and grant to other. Looked in that context, the word 'may'

shall have to be read as 'shall'.

The present case is squarely covered by the ratio of judgment in the case of Buta Singh (supra). In addition, for the reasons mentioned above, this Court is of the view that the period during which the petitioner remained under training and probation and served in various capacities while under training, is to be treated as a service for all intents and purposes.

Therefore, I am of the view that the petitioner is entitled to counting of his training period from 26.9.1974 to 8.2.1978 as service for all intents and purposes and accordingly, after considering the said service and granting him benefit of first national emergency, his date of appointment is also to be corrected. Consequently, order dated 11.12.1978 (Annexure P4) is required to be amended. Petitioner joined as Tehsildar on 26.9.1974 on the basis of appointment letter dated 13.9.1974. By no stretch of imagination, his date of appointment to the post of Tehsildar can be treated as 8.2.1978 as stated in order dated 11.12.1978 (Annexure P4) and consequently, said order to that extent is quashed.

4. Whether the petition is barred by resjudicata?

Admittedly, the petitioner served as Tehsildar from 1974 and superannuated on 29.2.1996. During his service, he was compulsory retired on 9.3.1993. The said order was set aside in CWP No.7214 of 1993 only on 17.10.1996 when the petitioner had already superannuated. Admittedly, during his service, the petitioner did not challenge the order dated 11.12.1978 (Annexure P4). In CWP No.7214 of 1993 he was agitating his compulsory retirement and the cause of action to claim the service benefits for the purpose of pension accrued only after his superannuation on

29.2.1996. It also comes out that the petitioner filed several writ petitions and applications against the department and kept the department at tenterhook. Firstly, he was involved in a litigation regarding expunging of adverse remarks, which was contested upto Apex Court. Then he filed writ petition against the orders of the Selection Committee, vide which, his name was rejected for consideration to the HCS Executive Branch. Thereafter, he was compulsorily retired. He challenged the said order by filing writ petition. Thereafter, he filed Civil Appeal No.2165 of 1998 (arising out of SLP No.12722 of 1995), in which, he had claimed the gratuity and retiral benefits. He filed as many as nine interim applications in the said Civil Appeal No.2165 of 1998, claiming the release of pensionary benefits. In the interim application No.8 (Annexure P13) filed in Hon'ble Supreme Court in Civil Appeal No.2165 of 1998 (arising out of SLP No.12722 of 1995), the petitioner had claimed benefit of military service from 10.1.1968 to 1.7.1968 i.e. equal to five months 20 days, paramilitary service (GREF) from 31.10.1969 to 22.9.1974 i.e. four years 11 months and 21 days. State Civil services (Apprentice/ Training period) from 26.9.1974 to 8.2.1978 i.e. three years four months and 23 days. The Supreme Court passed the following order in the said application:-

“It would be appropriate for the appellant to pursue appropriate remedies instead of filing this I.A. Therefore, I.A. No.8 stands rejected.”

It means that in I.O. No.8 the matter was not finally decided by the Apex Court. Petitioner had also filed CWP (Civil) No.314 of 2004 (Annexure P16), which was disposed of on 23.8.2004 by the Supreme Court by passing the following order:-

“The writ petition is dismissed without going into the merits of the matter and without prejudice to the petitioner's remedy to approach the appropriate Court or Tribunal”

Civil Appeal No.2165 of 1998 was pending out of Special Leave Petition No.12722 of 1995, which means that this appeal pertains to the matter pending regarding his pre-mature retirement or the earlier litigation before his superannuation on 29.2.1996. Petitioner has also filed CWP No.8185 of 2005, which was withdrawn by him on 31.1.2007. In the said petition, the similar relief claimed in the present petition was claimed.

Following order was passed by learned Single Bench of this Court:-

“This is an application for withdrawal of the writ petition bearing C.W.P. (C) No.8185 / 2005, on behalf of the applicant/ petitioner, it is stated that the similar matter for adjudication is pending before the Hon'ble Supreme Court of India. The petitioner does not want to proceed in the main petition. The application is allowed. Main petition C.W.P. No.8185/ 2005 is dismissed as withdrawn.

Dated 31.1.2007 Sd/- M.M. Aggarwal, Judge.”

It appears that later on the application of the petitioner was disposed of by Supreme Court to seek appropriate relief. Hence, later on in the year 2008, the present writ petition was filed. Therefore, this Court comes to the conclusion that the petition is not barred by principle of resjudicata as the issue involved in the present case was never considered and finally decided by any competent Court of law.

5. Whether the petition is barred by latches?

The petitioner was appointed as Tehsildar vide appointment

letter dated 13.9.1974 when he was posted in GREF and he was selected to the post of Tehsildar on account of his qualifying in Haryana Civil Services Executive Branch and other Services Examination 1972. Admittedly, his selection was against the post meant for ex-servicemen. Petitioner continued to serve the department till 29.2.1996. In the meanwhile, the petitioner had claimed the benefit of seniority and other service benefits on account of his service in military. His certificate of release from the Army as Emergency Commissioned Officer is dated 29.4.1969 (Annexure P1) and discharge certificate from the post of Civilian Officer Grade II from GREF is dated 27.4.1978 (Annexure P2), showing that he had been released at his own request on 23.9.1974. It is apparent that 3 days later i.e. 26.9.1974 he joined as Tehsildar on account of his appointment letter dated 13.9.1974. When the petitioner claimed the benefits of service rendered in the Army, order Annexure P4 was passed on 11.12.1978. He was allowed the benefit of service rendered by him in Indian Army during National Emergency from 29.4.1963 to 10.1.1968 and his date of appointment as Tehsildar was treated as 27.5.1973. His pay was fixed at Rs.450/- pm in the scale of 320-25-500/30-650/30-800 w.ef. 8.2.1978 i.e. actual date of appointment for the post of Tehsildar, whereas the petitioner had joined on 26.9.1974 and remained in training till 8.2.1978. The petitioner never challenged the order (Annexure P4) during his service. For the first time, he raised such question in interim application in Civil Appeal No.2165 of 1998, arising out of SLP No.12722 of 1995, that too after his retirement. Thereafter, he filed writ petition before this Court as discussed above, which was withdrawn by him in the year 2007. The present writ petition was filed in the year 2008. Therefore, admittedly, there is an inordinate delay and

latches in approaching the Court, seeking benefit of service rendered in GREF and as Tehsildar and impugning order (Annexure P4).

Now, the question is whether on the ground of delay and latches, the writ petition is required to be dismissed?

I am of the view that the present case is a case of calculations of services of the petitioner. It is exceptional case of injustice done to the petitioner. The above discussion clearly shows that the department acted in an arbitrary manner in denying the benefit of service under the GREF and the benefit of service rendered by the petitioner during training period as a Tehsildar with the result that the full benefit of service rendered by the petitioner during first national emergency was denied to him and his date of appointment in the service was treated to be 27.5.1973, while giving benefit of service rendered during First National Emergency, while considering his date of appointment to post of Tehsildar as 8.2.1978, whereas actually it was 26.9.1974. I am of the view that in ordinary cases, the petition would have been dismissed. However, since the department has committed gross illegality by denying an ex-army man, the proper benefit of his service, therefore, it is an exceptional case of injustice. In such circumstances, as an exceptional case, the Court cannot sit as mute spectator. Therefore, notwithstanding the delay and latches, the petition is not required to be dismissed on the ground of delay and latches only, though the petitioner can be declined benefit of arrears of salary and the interest can be restricted to 38 months before the filing of the present writ petition.

6. Whether the petitioner is liable to be promoted to HCS and is to be considered as IAS?

Since the petitioner had superannuated and it is clear that the

case of the petitioner was rejected by the selection committee and he had unsuccessfully contested the said order upto Apex Court, therefore, the petitioner is not entitled to the promotion sought for by him to the post of HCS Executive/ IAS.

As a result of foregoing discussion, the present writ petition is allowed. It is ordered as under:-

- (i) The service of the petitioner under GREF from 31.10.1969 to 22.9.1974 will be treated as qualifying service for the purpose of grant of pensionary benefits subject to the conditions laid down in the Government instructions. The gap between the service of the petitioner in the GREF and Tehsildar shall be excluded while computing the benefit of said service to be given to the petitioner.
- (ii) The training period of the petitioner as Tehsildar from 26.9.1974 to 8.2.1978 is treated to be as service for all intents and purposes, including grant of retiral benefits. Accordingly, after granting the benefit of First National Emergency, the date of appointment of the petitioner as Tehsildar is required to be refixed and the consequential benefits are to follow. The rules, instructions and orders passed by the respondents to the contrary are hereby quashed.

In the circumstances, after computing the said service, the pension and other pensionary benefits of the petitioner are required to be recalculated and refixed. It is further directed that the petitioner shall not be entitled to any arrears of salary and other service benefits etc. on account of undue delay and laches in approaching this Court. However, he is entitled to arrears of pension and other retiral benefits. Interest @ 9% per annum on the arrears of pension and other retiral benefits, which becomes

due to the petitioner, will commence from 38 months prior to the date of the filing of present petition till date of payment. Arrears of pension, retiral benefits and interest be released to petition within three months from the date of receipt of a certified copy of the judgment.

30.11.2016
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
Yes