

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11236-2013 (O&M)
Date of decision: 02.12.2016

Isham Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.V.B.Aggarwal, Advocate for the petitioner
Mr.Naveen Sheoran, DAG Haryana

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

Kuldip Singh, J. (Oral)

Prayer of the petitioner in this writ petition is that his military service from 15.7.1967 to 20.7.1973 rendered in the Army should be counted for the purpose of grant of pensionary benefits under Rule 4.3(a) of Punjab Civil Service Rules Volume II. Petitioner served in the Indian Army from 15.7.1967 to 20.7.1973. Admittedly, First National Emergency remained in operation from 26.10.1962 to 10.1.1968 and the 2nd National Emergency remained in operation from 3.12.1971 to 23.3.1977.

After being discharge from the Army, the petitioner joined as Revenue Patwari on 6.12.1982 and after serving the revenue department for 24 years retired from service on 30.4.2006 as Kanungo. The claim of the petitioner for computing entire military service was partly declined vide impugned order dated 3.1.2013 (Annexure P6), wherein only the benefit of military service rendered from 15.7.1967 to 10.1.1068 was given to him.

However, pensionary benefits for the entire military service was not given.

In the written statement, the respondents have relied upon notification dated 4.8.1976 (Annexure R-2), wherein the definition of military service was amended to mean that “the service rendered by a person, enrolled or commissioned during the period of operation of the proclamation of emergency made by the President of India is only treated as “military service”. It is stated that the petitioner joined during the First National Emergency and benefit of his service rendered during First National Emergency has been granted to him.

I have heard learned counsel for the parties and have also carefully gone through the file.

It comes out that there appears to be a confusion with the respondents. The respondents are restricting to the benefit of service during First National Emergency, whereas the petitioner is claiming benefit of entire military service under Rule 4.3(a). Rule 4.3(a) is reproduced as under:-

4.3(a) Service rendered by an employee belonging to one of the classes mentioned in the Schedule below after attaining the age of 18 years, which is pensionable under military rules, but which terminates before a pension has been earned in respect of it, [shall be counted]⁴, when followed by service qualifying for pension under civil rules, as part of such service. Service so allowed to count shall, however, be restricted to service, within or outside employee's unit or department, in India or elsewhere, which has been paid from Indian revenues or for which a pensionary continuation has been received by Indian revenues:

Provided that any bonus or gratuity received in lieu of pension on, or since, discharge from military service, shall be refunded in such number of monthly instalments, not normally exceeding 36 and beginning from such date, as in each case, the Government may decide. The amount shall be refunded along with interest calculated at the rate applicable on General

Provident Fund accumulation from time to time computed in the same manner (i.e. with annual compounding) for the period from the date of receipt of pensionary/gratuity benefits till the date of refund to the Government :

Provided further that in cases where after the issue of the orders by the competent authority on the basis of option exercised by an employee for counting of past service for pensionary purposes, if an individual does not deposit the amount of bonus/gratuity already received by him from military authorities within one month of the receipt of communication from the Government/autonomous body, penal interest at the rate of 10% per annum shall also be charged in addition to normal rate of interest. The condition of payment of interest/penal interest shall also be applicable for military service benefit under the Punjab Government National Emergency (Concession) Rules, 1965.

The benefit of military service rendered during National Emergency is one thing and the prayer of benefit for the entire military service is different under Rule 4.3A. The matter was considered by a Division Bench of this Court in Modan Singh vs. State of Punjab and others, 2007(1) RSJ 714 and after considering Rule 4.3A the benefit of military service was allowed. Similarly, a Single Bench of this Court in Indu Boken (Capt.) vs. State of Haryana and others, 2013(1) RSJ 36, after considering Rule 4.3A, observed as under:-

6. *A perusal of the above Rule would show that the service rendered by an employee after attaining the age of 18 years with the Military is to be counted for the purpose of pensionary benefits. This is, however, subject to certain conditions which have been imposed therein such as the deposit of bonus or gratuity received in lieu of pension which an employee earns on his discharge from Military service. The only rider is that the said service should be followed by a civil service and in the said*

civil service, this benefit is to be counted. It does not specify as to when it has not to be counted and the only exception therein is that if an employee has earned pension on his/her discharge from Military service, he/she would not be entitled to the counting of the said benefit.

7. *The judgment rendered by the Division Bench of this Court in Capt.V.S.Narwal's case (supra), while interpreting Rule 4.3 (a) of the PCS Rules Vol.II has held as follows:-*

“As regards the claim to pension, the provision in Rule 4.3(ibid) is clear. It postulates that the service rendered by an employee after attaining the age of 18 years, which is pensionable under Military Rules, when followed by civil service shall be allowed to count towards pension. The Rule further postulates that any bonus or gratuity received by the employee in lieu of pension on his discharge from the military service shall be refunded in such monthly instalments as the Government may decide. In view of this provision, the petitioner would be entitled to count the from March 18, 1978 to April 4, 1984 towards pension on his retirement from the civil post. He would also have to refund the amount of gratuity or bonus, if any, received by him, in lieu of pension at the time of his discharge.”

8. *In view of the above, the action of the respondents rejecting the claim of the petitioner for counting the said service for the purpose of pensionary benefits cannot be accepted.*

In the present case, admittedly, the petitioner served only for the about five years in the Army and his service is not pensionable. Therefore, provisions of Rule 4.3(a) are attracted in the present case. Therefore, in terms of Rule 4.3(a) and authoritative pronouncements of this Court, it is held that the petitioner is entitled to the benefit of entire military service towards grant of pension from 15.7.1967 to 20.7.1973, subject to the

condition that the bonus or gratuity, if received by him, since discharged from the military, shall be refunded by him. The petitioner shall also be entitled to interest @ 9% per annum from the date of filing of the present petition till payment.

Petition is allowed in above noted terms.

02.12.2016

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes