

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

**CWP No.22555 of 2012
Decided on :06.04.2016**

Dilbagh Singh Sandhu

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Vishal Goel, Advocate for
Mr. J.S. Thind, Advocate for the petitioner.

Mr. L.S. Virk, Addl. AG, Punjab.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks the benefit of increments in pension as an ex-serviceman under the Punjab Recruitment Ex-Servicemen (First Amendment Rules), 2009 amended upto date for the service rendered by him in the Army from 16.09.1972 to 22.06.1980. The same was done during the 2nd National Emergency from 03.12.1971 to 25.03.1977.

Reliance has also been placed upon the judgment of the Division Bench passed in CWP No.13004 of 2007 '***Hari Chand Vs. The State of Haryana and others***' decided on 05.05.2008 (Annexure P-4) and in ***CWP No.8170 of 2009 'Hawa Singh Vs. State of Haryana and another'*** decided on 17.01.2012 (Annexure P-5), for claiming the said relief.

It is the case of the petitioner that after the service in the Indian Army for the abovesaid period, he had thereafter joined service in the Department of Social Securities Women and Child Development, Punjab, Chandigarh as Child Development Project Officer (CDPO) on 07.07.1992 under the ex-serviceman quota, from where he retired on 30.11.2008 on attaining the age of superannuation.

Reference is made to the letter dated 29.08.2011 (Annexure P-1), whereby the relief was denied to him on the ground that he had come to the department on 08.07.1992 and as per the instructions dated 21.07.1986 (Annexure R-1), the benefit of Military service rendered could only be given to those persons who were discharged and had come in civil service before 12.02.1982. Therefore, he was held not entitled to get the benefit of Military service rendered during national emergency. Regarding the payment of gratuity if the petitioner had received, it is averred that he is ready to deposit the same with the Government.

It is the categorical case of the petitioner that he is not getting pension from the Army and reliance has been placed upon the amended rules of 2009 which provide that persons who had joined and rendered service during the abovementioned period of the 2nd National Emergency, they will be entitled for the benefit of increments and pension. The period of Military service was to be counted for the purpose of increments and pension, in case of an

appointment to a permanent post. However, as per the rules the person should not have earned a pension under the military rules and if any pension, bonus or gratuity was paid, it was to be refunded to the Government.

The State in its defence has taken the plea that the rejection was on account of the fact that the case was not covered under the rules and placed reliance upon the instructions dated 21.07.1986 (Annexure R-1) to take shelter of the cut-off-date.

It is not disputed that as per the amendment made in the year 2009, persons who had joined or rendered service during the 2nd National Emergency from 03.12.1971 to 25.03.1977 are entitled for the benefit of increments and the pension and the period of Military service rendered during the said emergency is to be counted towards pension. The relevant part of the rule reads as under:-

“8-B Increments and pension- *Period of military service rendered during the Second National Emergency from 3rd December, 1971 to 25th March, 1977 shall count for increments and pension as under:-*

a) Increments- *The increments for the aforesaid service shall be paid to those persons only, who joined and rendered service during the aforementioned period. This benefit will, however, be given only at the time of making first appointment on regular basis on a civil post or service under the Government. However, these increments will be taken into account when the pay of a person is subsequently fixed on account of his promotion, selection, new recruitment or revision of pay scale or otherwise and*

b) Pension: *The period of military service referred to above, shall count towards pension only in case of an*

appointment to a permanent post under the Government, subject to the following conditions, namely:-

(i) The person concerned should not have earned a pension under military rules in respect of the military service in question;

(ii) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the Government; and

(iii) 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 as per the orders of the Government.”

The State's reliance upon the cut-off-date was on the basis of instructions dated 21.07.1986 which read as under:-

“ Copy of Punjab Government Circular letter No.10/35/86-5PP (2407)/10733, Dated 21/7/1986 from Department of Personal and Administrative Reforms, Addressed to all Heads of the Departments etc., etc..

Subject: Regarding granting the benefits of Military Service under the Punjab Government National Emergency (concession) Rules, 1995 after taking into the judgment of the Hon'ble Supreme Court in Pritam Chand Versus State of Punjab to the Ex-servicemen who came to service from Army on compassionate grounds.

I have been directed to bring to your notice on the subject cited above regarding the judgment dated, 5 September, 1984 of the Hon'ble Supreme Court of India in Civil Appeal No.2617 of 1980- Pritam Chand Clerk, Co-operative Audit Department, Punjab, Chandigarh Versus State of Punjab (Copy of the judgment enclosed) in which the decision of the Punjab and Haryana High Court in L.P.A. No.401 of 1976 has been set aside. As a result of this judgment the ex-servicemen who were released from Army on compassionate grounds can also be covered to get the benefit of Military Service which they rendered during emergency. But this benefit will be given to only

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those released ex-servicemen who joined Civil Service before 12 February, 1982 and fulfilled the remaining conditions regarding concerned rules.”

It is not disputed that thereafter vide the amendment made in the year 2009, which pertained to the benefit to be given to such persons who rendered service during the 2nd National Emergency, the benefits were to be given and the petitioner falls in that category. The respondents have failed to take into consideration Rule 8-B regarding the entitlement to the persons who had joined and rendered service during the period of 2nd National Emergency which would cover the case of the petitioner, while wrongly placing reliance upon the instructions dated 21.07.1986 which would have no relevance in view of the subsequent made, under which the petitioner is claiming his entitlement.

In such circumstances, the order dated 29.08.2011 (Annexure P-1) declining the same cannot be held to be justified. Accordingly, the same is quashed. The respondents shall reconsider the issue afresh, keeping in view the amendment made in the year 2009. The said exercise be carried out within a period of 3 months from the receipt of the certified copy of this order.

With the abovesaid observations, the present writ petition stands disposed of.

APRIL 06, 2016
Naveen/sailesh

(G.S. SANDHAWALIA)
JUDGE