

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

CWP No. 22835 of 2012

Date of Decision: 20.10.2016

ANAND KUMAR RANA

... Petitioner

V/s

STATE OF HARYANA AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Jagjeet Beniwal, Advocate,
for the petitioner.

Mr. Gaurav Goyal, AAG, Haryana.

KULDIP SINGH, J (ORAL)

The petitioner by way of this writ petition filed under Articles 226/227 of the Constitution of India seeks issuance of writ of mandamus directing the respondents to grant the benefit of service rendered by the petitioner in the Indian Navy from January 1969 to January 1979 and to grant the pay scale to the petitioner equal to other employee appointed on the same post and in the same department.

Brief facts of this case are that the petitioner served in the Indian Navy on the post of Physical Training Instructor (Rank Seaman First Class) for the period of 10 years i.e. w.e.f. January 1969 to January 1979. Thereafter, he was relieved from service of the Indian Navy on 04.01.1979 without being eligible for the pension under the Rules. Thereafter, the petitioner was appointed on the post of Superintendent-cum-PTI in the Department of Industrial Training Institute, Haryana on 14.10.1982 (Annexure P-2).

The prayer of the petitioner is that the benefit of service rendered by him in Indian Navy should be counted for grant of pension under

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Rule 4.3 (a) of the Punjab Civil Services Rules, Volume-II as applicable to Haryana. Learned counsel for the petitioner contended that one Dharamvir Singh son of Surat Singh appointed on 09.12.1982 on the same post in the same department was given higher pay scale, therefore, the petitioner should also be given higher pay scale.

The State in the reply has taken the stand that as per the instructions dated 07.10.1991 (*Annexure R-I*), the petitioner is not entitled to the benefit of military service as the benefit of military service is admissible to only those ex-servicemen who joined the military service during the period of Emergency i.e. from 26.10.1962 to 10.1.1968. The credit of the military service would be limited to the period of service rendered during the emergency period only. Regarding the case of Dharamvir Singh, it is stated that the post of Hostel Superintendent in Industrial Training Institute Haryana, was divided in two categories; one for trained graduate and other for untrained graduates. Those who were having degree/diploma given the pay scale of ₹525.00 - ₹1050.00 and the untrained graduates were given ₹480.00 - ₹760.00 which was further revised. The petitioner was not a trained graduate, therefore, he was given different scale of untrained graduate.

I have heard learned counsel for both the parties.

The similar controversy raised in the present case was also come up for hearing earlier in *CWP No. 20053 of 2009* titled as *Capt. Indu Boken Vs. State of Haryana and others* decided on 11.10.2012 (*Annexure P-8*).

Here, it is the case that the petitioner claimed the benefit of service not rendered during emergency. He claims the benefit of Rule 4.3 (a)

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of the Punjab Civil Services Rules, Volume II as applicable to Haryana. The said Rule was discussed in *Capt. Indu Boken's case* (supra) and it was held that the person serving in the Army is entitled for increments and pension for the said period he/she served during the Emergency.

It comes out that in the un-amended Rules, there was discretion of the Government to count the said service as qualifying for the pension under the Civil Rules. However, by the subsequent amendment, the Rule 4.3 (a) was amended to the extent that the word “may at the discretion of the government be allowed to count” was substituted by words “shall be counted” by way of notification dated 10.09.2007. The result would be that the service, which does not qualify for pension, rendered in the Army has to be counted for computing pension subject to refund of bonus or gratuity received in lieu of pension. In the said *Indu Boken's* case the following relief was granted: -

“The present writ petition is allowed; a direction is issued to the respondents to count the service rendered by the petitioner in the Army from 07.03.1993 to 20.08.1998 towards the grant of advanced increments as also the pension. The arrears be calculated and released to the petitioner within a period of three months. Petitioner shall, however, deposit the amount which she has received as gratuity or bonus on her discharge from Army which shall be calculated by the respondents and intimated to her within a period of one month. This amount shall be deposited by her within a period of two weeks thereafter.”

The case of the petitioner is similarly situated with case of Indu Boken's case (Supra), therefore, the petitioner is also entitled for the same relief. Accordingly the petition is allowed. The service rendered by the petitioner from January 1969 to January 1979 in the Indian Navy is order to

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be counted for the purpose of pension. The petitioner shall deposit the amount received by him on account of gratuity or bonus on a discharge from the army. The said amount shall be calculated by the respondents and be intimated to the petitioner within two weeks and the same be deposited by the petitioner within two weeks thereafter and then the arrears will be released to the petitioner within three months thereof.

In view of the above, the present petition stands allowed.

October 20, 2016
Suresh Kumar

(KULDIP SINGH)
JUDGE

	✓	
<i>Whether speaking / reasoned</i>	<i>Yes</i>	<i>No</i>
		✓
<i>Whether Reportable</i>	<i>Yes</i>	<i>No</i>