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

CWP No. 23527of 2013

Date of Decision: 16.08.2016

PAWAN KUMAR BHARDWAJ

... Petitioner

VS.

CHANDIGARH ADMINISTRATION AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. V.K. Shukla, Advocate,
for the petitioner.

Mr. A.P. Sethi, Advocate
for the respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest?*

KULDIP SINGH (J.)

Brief facts of this case are that Pawan Kumar Bhardwaj-petitioner served in the Indian Air Force from 08.11.1965 to 30.11.1985. Thereafter, he joined the Civil Services as Field Investigator in Zila Sainik Board under Union Territory of Chandigarh w.e.f. 01.07.1987. It is claimed that the President of India proclaimed first National Emergency w.e.f. 26.10.1962 to 10.01.1968 in exercise of the powers under Article 356 of Constitution of India. Similarly, another National Emergency was imposed w.e.f. 03.12.1971 to 25.03.1977. The petitioner had retired from service on 31.01.2006. It is not denied on behalf of the petitioner that he was granted benefit of the first National Emergency. Now, his claim is for grant of benefit of second national emergency imposed w.e.f. 03.12.1971 to 25.03.1977 for the purpose of increments and pension in view of the Punjab Government National

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Emergency (Concession) Rules, 1965 and the circular dated 19.03.1987 (Annexure P-3).

The respondents in the written statement has taken the stand that the issue regarding grant of benefit of military service during the proclamation of national emergency, has been interpreted by the Supreme Court of India in **State of Punjab Vs. Harbhajan Singh; 2007 (12) SCC 549** wherein it was held that the benefit of military service can only be granted if the person had joined the military service during the national emergency and not before or after it. In the present case, the petitioner had joined the Indian Air Force prior to the second national emergency declared in December, 1971. Further, reliance was placed on the full bench judgement of this Court in **LPA No. 1042 of 2012** titled as **Punjab State Power Corporation Limited, Jalandhar Vs. Waryam Chand**. Therefore, the respondents have taken the stand that the benefit of second national emergency cannot be granted to the petitioner for the purpose of increments and pension. It has further been stated that the Punjab Government National Emergency (Concession) Rules, 1965 were repealed and replaced by the Punjab Recruitment of Ex-servicemen Rules, 1982 wherein Rules 8 (A) and 8 (B) provide about grant of benefit of increments and pension only to the persons who had joined during the national emergency.

I have heard learned counsel for both the parties.

The short question arising for consideration before this Court is as to whether the petitioner who had joined the military service on 08.11.1965, during the first national emergency declared from 26.10.1962 to 10.01.1968 and has been granted the benefit of the said first national emergency, is he also

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entitled to the benefit of second national emergency declared from 03.12.1971 to 25.03.1977, during which he served the Indian Air Force?

Learned counsel for the petitioner has relied upon the judgment rendered by the Division Bench of this Court in **CWP No. 17661 of 2013** titled as **Rajinder Singh Vs. State of Punjab and others** (alongwith other connected cases) decided on 13.11.2014 wherein it was held that in such eventuality the petitioners are entitled to grant of benefit of military service rendered by them during the second national emergency towards the pension. However, they are not held entitled for grant of any benefit of their military service rendered during the second national emergency towards the increments.

The matter was considered by the full bench of this Court in **L.P.A. No. 1042 of 2012** titled as **Punjab State Power Corporation Limited, Jalandhar Vs. Waryam Chand** decided on 12.03.2013. The relevant extract from the said judgment is reproduced as follows: -

“Now coming to the prayer made in Civil Writ Petition No.14705 of 2012, it is noticed that the petitioners have pleaded for grant of Military service benefit for the period of their service during second emergency. The petitioners in this writ petition have served in the Armed Forces during second emergency which was from 3.12.1971 to 25.3.1977. None of the petitioner had joined the Military service during the proclamation of emergency. These petitioners would pray for grant of Military Service benefit in terms of the definition of term Military service defined in 1965 Rules. Concededly, 1965 Rules were superseded by 1982 Rules. Almost all the petitioners, except one, had joined the service much prior to 1982 Rules came into being. The petitioners are aggrieved by Rule 8-B, which provides that the person who had joined and rendered service during aforesaid period of second emergency only would be entitled to the benefit of the Military service.

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Rule 8-B has been introduced on 15.10.2009 in 1982 Rules. Though this amended rule is challenged by the petitioners in this writ petition but this challenge is rendered futile now as this rule has subsequently been further amended in the year 2012. This amendment is perhaps not in the notice of the petitioners. None has appeared to represent the petitioners at the time of hearing.

In the amended Rule 8-B in clause (a) in the second line the words “joined and” have been omitted. The earlier Rule 8-B clause (a) was as under:-

“8-B. Increments and pension.-

xx xx xx xx

(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 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”.

The amended Rule 8-B clause (a) would now read as:-

“ 8-B, Increments and pension

nxx xx xx xx xx xx

(a) Increments- The increments for the aforesaid service shall be paid to those persons only, who 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.”

Thus, the amended Rule 8-B (a) now provides that the increment for aforesaid service shall be paid to those persons only who rendered service during the aforesaid period as words “joined and” have been deleted. What is allowed by this amendment is taken away by

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introducing another amendment. In clause (b) a further subclause (iii) has been added to provide that: “ these benefits shall be available to all the persons who were appointed in the Government service against reserved vacancies and were in service as on 1.12.2011 or are appointed thereafter”. There is also a proviso under this sub-clause, which states “provided that these benefits shall be admissible for pay fixation on notional basis with effect from 1.1.2012 and arrears on account of pay shall not be paid”.

Accordingly, the benefits which otherwise may have accrued to the petitioners have been taken away by sub-clause (iii) reproduced above.

All the petitioners have retired from service between a period from 2005 to 2010. Thus, in order to get any benefit of the Military service, they may have to challenge the amended rules. There is no such challenge raised. This rule clearly provides that these benefits of increments etc. would be available to all those persons who were appointed in the Government service against reserve vacancies and were in service as on 1.12.2011 or are appointed thereafter. This Rule otherwise, thus, would directly stare at the petitioners and would disentitle them to claim benefits. The relief claimed in the writ petition, therefore, cannot be allowed.”

The aforementioned judgment goes to show that the full bench has ruled that in order to avail the benefit of National Emergency towards increments and pension, the petitioner must have joined the military service during the said period of emergency. In the present case, the petitioner had joined during the first national emergency and has been granted the benefit of first national emergency. The mere fact that the petitioner also served the military service during the second emergency does not mean that he is entitled to the benefit of military service during the said period also, since, he does not fulfill the requirements of the Rules. It also comes out the full bench of this Court also considered the fact of amendment of Punjab Government National

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Emergency (Concession) Rules, 1965 which has since been amended by new set of Rules called the Punjab Recruitment of Ex-servicemen Rules, 1982 which have been further amended in the year 2012. Therefore, the said authority is applicable to the facts of the present case.

Learned counsel for the petitioner has contended that as per the order (*Annexure P-23*) issued by the Administrative Officer for Inspector General of Police, Union Territory of Chandigarh, the benefit of second emergency has been granted to some of the retired police officials, who had served during the second national emergency though they had joined prior to it. It is further contended that since the said police department is also under the Chandigarh Administration, the same benefit cannot be allowed to one set of employees and denied to other set of employees.

I am of the view that the said order is not in consonance with the law laid down by the full bench judgment of this Court, therefore, if some error has been committed by one department of the Union Territory of Chandigarh, the benefit of the same error cannot be extended to the petitioner. The petitioner has to satisfy this Court that under the existing laws, he is entitled to the benefit of the military service rendered during the second emergency.

Therefore, in view of the law laid down by this Court in **Punjab State Power Corporation Limited, Jalandhar Vs. Waryam Chand** (Supra) the present petition fails and hereby dismissed.

August 16, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

Whether speaking reasoned ✓
Yes / No

Whether Reportable ✓
Yes / No