

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 5323 of 2013

Date of Decision : February 08, 2016

Amar Singh Mehla Petitioner
vs.
State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Naveen Singh Panwar, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

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DEEPAK SIBAL, J. :

Through the present petition, challenge is made to order dated 24.03.2008 (Annexure P-3), vide which the petitioner has been denied the entitlement to the benefit of military service rendered by him towards pension.

After hearing counsel for the parties and perusing the record with their able assistance, the uncontroverted facts, which have emerged are that the petitioner was enrolled in the Indian Army on 06.02.1963 and

was discharged on 28.02.1991. Thereafter, on 03.09.1993, he joined the Zila Sainik Board as Welfare Organiser and retired as such on 30.04.2001. As he did not have the requisite 10 years of service while holding the aforementioned civil post of Welfare Organiser in Zila Sainik Board, he was denied the pensionary benefits by the respondents. On such denial, while relying on the Punjab Government National Emergency Concession Rules, 1965 (hereinafter referred to as – the 1965 Rules), the petitioner made a representation for counting the military service rendered by him in the Indian Army during the national emergency, towards pensionary benefits. On the rejection of his representation, the present petition has been filed.

It is the admitted position that for the service rendered by the petitioner in the Indian Army, he is receiving pension from the Indian Army. That being so, his claim under the 1965 Rules is not made out in view of condition no. 1 to Rule 4 (iii) of the 1965 Rules, which is reproduced below :-

“4. Increments, seniority and pension :-

Period of Military Service shall account for increments, seniority and pension as under :-

xx xx xx xx

(iii) Pension :- The period of military service mentioned in clause (i) shall count towards pension * [in case of first or any subsequent

appointment to any service or post] under the Govt. subject to the following conditions :-

1. The person concerned should not have earned a pension under military rules in respect of the military service in question ; [Emphasis supplied]

The afore-quoted provision of Note 1 of 1965 Rules came up for interpretation before a Division Bench of this Court in **L. P. A. No. 694 of 2009 – State of Haryana and another vs. Mohinder Singh**, decided on **17.09.2009** and the same was interpreted as under :-

“7. It will be appropriate to reproduce the relevant part of Rule 4(iii)(3) of the 1965 Rules, which is as under :-

*“**Pension** :- the period of military service mentioned in clause (i) shall count towards pension only in the case of appointments to permanent services or posts under the Government subject to the following conditions :-”*

The above provision clearly shows that the benefit of pension is not available to a person who may have earned pension under Military rules in respect of the Military service in question.

8. *It is not disputed by learned counsel for the respondent that the respondent had earned pension under Military rules in respect of Military service in question. His submission is that by virtue of clarification under the C.C.S.(Pension) Rules, 1972 (for short, "the 1972 Rules"), there could be no limitation for civil pension for re-employed Military pensioner, drawing Military pension. Reliance has been placed on a notification under the 1972 Rules.*

9. *We are unable to accept this submission. The 1972 Rules apply to civil services in connection with the affairs of the Union Government and not to employees serving under the state Government. In Harikesh (supra), relying upon the said Rules, it was observed that limitation under the 1972 Rules was removed by the said rules, but question of applicability of said rules to the employees of the state of Haryana was neither raised nor considered. We asked learned counsel for the respondent to show how the 1972 Rules will apply to the respondent. He has not*

been able to show applicability of the said rules.

In view of Rule 2 of the 1972 Rules, limiting their applicability to Government servants serving in connection with affairs of the Union, the said rules cannot apply to the respondent. The DB judgment in Harikesh (supra) cannot, thus, be of any benefit to the respondent on this point. If the said rules are not to be applicable, a plain reading of Condition 1 of Rule 4 (iii) excludes the benefit of Military service for pension to an employee working in the State of Haryana after discharge from Military service. [Emphasis supplied]

A perusal of the afore-quoted judgment of the Division Bench in **Mohinder Singh's** case (*supra*) leaves no room for doubt that in case an employee is earning pension from the Military Authorities in respect of the Military service rendered by him, no benefit of the same can be granted to him under the 1965 Rules.

As noticed earlier, it is the admitted position that for the military service rendered by the petitioner, he is receiving pension from the Army.

No law to the contrary has been cited by learned counsel for the petitioner.

In view of the above, finding no merit in the present petition,
the same is hereby dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

February 08, 2016
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