

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

CWP No. 10449 of 2003 (O&M)

Date of decision: February 1, 2017

Sarup Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Gurnam Singh, Advocate, with
Mr. VP Singh, Advocate,
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner herein is seeking a direction to be issued to the respondent authorities to count the military service of the petitioner rendered during emergency for the purposes of increments and pensionary benefits.

2. The petitioner joined the Indian Army as driver on 13.12.1962. He served in the Indian Army till 05.09.1971 on which date he was discharged on compassionate grounds. During his service in the Indian Army, he participated in the Indo Pak war in the year 1965 and 1971. He was in the Indian Army during the entire period of emergency proclaimed by the President of India on 26.10.1962 till the emergency was lifted on 10.01.1968. During his service, he was also awarded by Raksha Medal and Sena Sewa Medal on account of the excellent service rendered during his term in the Indian Army. After discharge, the petitioner joined as driver in

PWD on 25.10.1972. He joined on the pay scale of ₹110-4-130/5-160-5-180. His services were regularized w.e.f. 01.04.1978. The petitioner thereafter submitted an application seeking the benefit of his military services rendered with the Indian Army to be counted for the purpose of increment promotion and pensionary benefits. He was allowed 4 increments and his basic pay was fixed at ₹126 w.e.f. 25.10.1972. The petitioner retired from government service on 31.12.2001 on attaining the age of superannuation. He requested for the benefit of the Military service rendered in the Indian Army during the period of emergency to be counted towards his pensionary benefits, however, the same was denied. Aggrieved against such action the instant writ petition has been filed.

3. Mr. Gurnam Singh, learned Advocate appearing on behalf of the petitioner, contends that the petitioner joined the Army as a driver on 13.12.1962, worked through the period of emergency as declared by the Government of India and as such is entitled to the benefit of such military service. It is contended that the case of the petitioner was wrongly rejected on the ground that he had been given the benefit of four increments and since he had received pension from the Military he would not be entitled to the said period being counted toward his pension.

4. The claim of the petitioner would require examination in the light of the relevant statutory Rule i.e. Rule 4 of the National Emergency (Concession) Rules, 1965 (herein after to be referred as '**1965 Rules**') and the same reads as under:-

"4. Increments, seniority and pension- Period of Military service shall count for increments, seniority & pension as under:-

(i) Increments:-The period spent by a person in Military Service, after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count for increments. Where no such minimum age is prescribed the minimum age shall be as laid down in rules 3, 9, 3.10 and 3.11 of the Punjab Civil Services Rules, Volume II. This concession shall, however, be admissible only on first appointment.

(ii) Seniority:- The period of Military Service mentioned in clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered Military Service.

(iii) Pension:- The period 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:-

(1) The person concerned should not have earned a pension under Military rules in respect of the Military Service in question;

(2) Any bonus or gratuity paid in respect of Military Service by the defence authorities shall have to be refunded to the State Government.

(3) 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 under the order of the Government."

5. The petitioner herein served in the Indian Army during the entire period of emergency proclaimed by the President of India on 26.10.1962 till the emergency was lifted on 10.01.1968. The service

certificate filed with the authorities clearly shows that he had served with the Indian Army from 13.12.1962 till the date of his discharge on 5.9.1971 on 'compassionate grounds'. Having served for less than 15 years, he was not given the benefits of pension etc. In **State of Punjab and others versus Malkiat Singh reported in 2011 (2) RSJ page 355**, it has been held that persons' who had rendered military service cannot be denied the benefits of Rule 4 of the Rules of 1965. It was further held that persons who have been released from Armed Forces on compassionate grounds are also entitled to the benefit of military service.

6. The impugned order dated 9.5.2003 holding that the petitioner had worked from 17.9.1963 to 10.1.1968 itself is not sustainable in view of the order dated 3.9.1986 by which the entire period of military service has been noticed while giving of 4 increments. The impugned order does not take note of the service certificate which mentions the petitioner retired on compassionate grounds. Since the petitioner retired on compassionate grounds, without completing the qualifying period of service, the rejection of his claim on the ground he had got his pension from the army is liable to be set aside.

7. For the reasons recorded above, the present writ petition is allowed. Impugned order of rejection dated 9.5.2003 (Annexure P-7) is hereby quashed. Directions are issued to the respondents to calculate the service rendered by the petitioner in the civil as well as in the military for computation of pensionary benefits. Such exercise be completed within a period of three months from the date of receipt of a certified copy of this order. The amount, so calculated, shall also be released to the petitioner

within this period along with interest @ 6% per annum from the date it is due till the actual date of payment. In case the amount is not released within the stipulated period, the interest payable will be @ 9% per annum.

February 1, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No