

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

CWP No. 22351 of 2015 (O&M)

Date of Decision: 30.03.2017

PERMJIT SINGH

...Petitioner

VS.

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. F.S. Virk, Advocate,
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

KULDIP SINGH, J (ORAL)

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of certiorari for setting aside the order dated 31.12.2014 (*Annexure P-6*). The prayer has also been made for issuance of writ of mandamus directing respondents to count the military service of the petitioner rendered in the Indian Army during the 2nd National Emergency period from 03.12.1971 to 25.03.1977 and release the pensionary benefits accordingly alongwith interest.

Brief facts of this case are that the petitioner had served in the Indian Army w.e.f. 07.07.1969 to 31.12.1985. During his service, 2nd National Emergency remained in operation w.e.f 03.12.1971 to 25.03.1977. After discharge from the Indian Army, the petitioner joined the Punjab Police on 04.04.1986 and superannuated on 31.12.2009. The petitioner has impugned the order conveyed vide endorsement dated 31.12.2014 (*Annexure P-6*) vide which the increment in respect of the military service of the petitioner has been declined. He claims that his military service rendered

CWP No. 22351 of 2015 (O&M)

during the 2nd National Emergency should be counted towards pensionary benefits.

In the reply, the respondents have taken the stand that the benefit of increment and gratuity can only be given to those persons who joined the military service during 2nd National Emergency. However, for the purpose of pension, the Punjab Recruitment of Ex-Servicemen Rules, 1982 (hereinafter referred as "the Rules, 1982") which came into force w.e.f. 01.12.2011 provides that the petitioner have to refund the bonus and gratuity paid in respect of the military service. In the present case, no such amount was deposited with the respondent State, thus, he is not eligible for pensionary benefits of that military service.

I have heard the learned counsel for both the parties and have carefully gone through the case file.

During the course of arguments, learned counsel for the petitioner does not press the case of the petitioner regarding grant of increment by counting of military service of petitioner rendered during the 2nd National Emergency. He only presses the claim of the petitioner for grant of pensionary benefits after computing the military service of petitioner rendered during the 2nd National Emergency.

The relevant extract of the Rules, 1982 is reproduced as under: -

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 under the orders of the Government.*

As per above quoted rules, an ex-servicemen was held entitled to the grant of benefit of his military service rendered during the Second National Emergency towards increments only if he had joined the service during the Second National Emergency. So far as pension is concerned, there was no such stipulation qua the same in the above rules.”

The perusal of the said Rules shows that for computing the military service of the petitioner rendered during the 2nd National Emergency, the petitioner have to fulfill certain conditions. First condition is that he should not be getting the pension under the Military Rules. Second condition is that if he got the bonus and gratuity, the same shall be deposited with the Government and third condition is that the period between the date of discharge from military service and date of appointment in the civil post should not exceed one year.

It comes out that the Rules, 1982 was amended vide notification dated 10.04.2012 but since the petitioner retired before that, un-amended Rules of 2009 will apply to the case of the petitioner.

Learned counsel for the petitioner has stated that the petitioner has neither deposited any amount of bonus and gratuity so received from the military authority nor any interest to the State Government.

CWP No. 22351 of 2015 (O&M)

It being so, the present petition is disposed of with the direction that the petitioner shall submit an affidavit before the respondents that he is not getting any pension under the military service in question. If such affidavit is filed, then the petitioner shall deposit the bonus and gratuity alongwith interest received by him from the military authority, to the State Government. On deposit of the same, the respondents shall pass a speaking order regarding grant of pensionary benefits in respect of the military service rendered by the petitioner during the 2nd National Emergency within two months from the date of deposit of bonus and gratuity alongwith interest.

March 30, 2017
Suresh Kumar

(KULDIP SINGH)
JUDGE

Whether speaking / reasoned :	✓ Yes / No
Whether Reportable :	✓ Yes / No