

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

CWP No. 5354 of 2015

Date of Decision: 09.02.2016

SAMARJIT SINGH

... Petitioner

VS.

STATE OF PUNJAB & ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Manu K. Bhandari, Advocate,
for the petitioner.

Ms. Vandana Malhotra, Addl. A.G., Punjab.

KULDIP SINGH, J. (Oral)

Brief facts of this case are that the petitioner, after rendering service in the Indian Army w.e.f. 30.04.1972 to 27.07.1977, was selected as Excise & Taxation Officer (ETO) after being successful in Punjab Civil Services (Executive and Allied) Service Examination held in 1979 by the Punjab Public Service Commission, Patiala. Accordingly, he joined the civil services as ETO on 24.06.1981 and ultimately retired as Joint Excise and Taxation Commissioner on 31.03.2009.

It also come out that during his service, he claimed seniority for the period during which he served in the military. After a long litigation, the claim of the petitioner was settled and vide letter dated 15.10.1998 (Annexure P-1), the Government granted him seniority after considering the period of military service. He was given deemed date of appointment as ETO w.e.f. 05.07.1974 and as Assistant Excise Taxation Commissioner w.e.f. 16.07.1982. Thereafter, it comes out that the benefit of military service rendered during the second national emergency was not granted to the

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petitioner and the second round of litigation was started. The petitioner procured the certificate dated 04.03.2008 (Annexure P-3) for the verification of the military service from the military authorities vide which his military service from 30.04.1972 to 27.07.1977 was verified with the remarks that gratuity of ₹5,000/-, paid to the Officer in September 1977, is required to be refunded to his present employer.

In the first petition CWP No. 14393 of 2012, decided vide judgment dated 30.07.2012 (Annexure P-8), this Court had directed the authorities to decide the representation dated 12.03.2012 (Annexure P-5) of the petitioner after passing a speaking order. Accordingly, speaking order dated 20.09.2012 (Annexure P-9) was passed whereby the claim of the petitioner was rejected on the ground that the period between the discharge from the military service and the date of appointment in the civil services being more than one year, cannot be condoned for grant of pension and further that he has not refunded the gratuity of ₹5,000/-.

The petitioner not being satisfied with the said order, moved this Court by way of another writ petition bearing No. CWP No. 25904 of 2012 which was dismissed by this Court vide order dated 04.04.2013 (Annexure P-10). The petitioner preferred the letter patents appeal bearing LPA No. 1365 of 2013 before a division bench of this Court which was decided vide judgment dated 18.11.2014 (Annexure P-15) ordering that in view the stand taken by the State counsel and the decision of this Court in LPA 1134 of 2013 decided on 11.11.2014 titled as Bakhra Beas Management Board and Others Vs. Chunni Lal Dogra, the State will reconsider the issue for granting the benefit to the appellant. A direction was issued to the respondents

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to reconsider the issue of granting the benefit of military service to the appellant. Accordingly, the matter was reconsidered and impugned order dated 26.02.2015 (Annexure P-18) was passed whereby the claim of the petitioner was again rejected on the ground that the gap/break between the military service and the civil appointment is more than three years. This is how the petitioner has challenged the order dated 26.02.2015 (Annexure P-18) before this Court.

The State in the reply has not disputed the services of the petitioner either in the military or in the civil employment. It was stated that in the seniority matter, the issue was whether the service rendered by the employee in Short Service Commission in the Indian army be counted towards seniority or not? The reference has also been made to the Punjab Recruitment of Ex-Servicemen Rules, 1982 (hereinafter referred as "the Rules, 1982") which came into force w.e.f. 02.02.1982. While referring Rule 8(a) 8(b) of the said Rules, 1982, it is stated that the case of the petitioner is not covered as a break period is of 3 years and 11 months between discharge from the army till the joining the civil appointment i.e 28.07.1977 and 24.06.1981 which has not been condoned by Government.

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

The factual position is not disputed. The petitioner served in the military w.e.f. 30.04.1972 to 27.07.1977. The second emergency remained in operation w.e.f. 03.12.1971 to 25.03.1977. The period of service rendered in the military would also show that he has joined the military service when the second national emergency was in operation. Needless to say that the benefit of

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seniority and fixation of pay has already been granted to the petitioner vide order/letter dated 15.10.1998 (Annexure P-1) after a long litigation.

The short question before this Court is whether the services rendered by the petitioner during the second national emergency is to be counted as a qualifying service for grant of pension or not?

In the impugned order dated 26.02.2015 (Annexure P-18), the respondent-department has relied upon the Rule 8 (b) of the Rules 1982 which came into effect w.e.f. 02.02.1982. Rule 8(b) is reproduced as under :-

“Rule 8-B Increments and Pension – *Period of military service rendered during the Second National Emergency from 3rd December, 1971 to 25th March, 1977 shall count for increments and pension as under: -*

- 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;*
- 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 State 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*

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not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of the Government.”

The perusal of the said aforesaid Rule shows that there are two components of the said rule regarding grant of pension; first is the period of second national emergency 03.12.1971 to 25.03.1977. The second component is the gap from the date of discharge from the military service till the date of appointment in the civil services. Under clause 3 mentioned above, the said gap beyond one year cannot be counted for pension. Except in the exceptional cases, any period exceeding one year but not exceeding three years may be allowed to be counted for pension under the orders of the Government. The petitioner is not claiming the counting of the said gap/break period as a qualifying service for the pension. His claim is only regarding first component i.e. the period during which he had served in the military during the second national emergency 03.12.1971 to 25.03.1977. Therefore, it appears that the order dated 26.02.2015 (Annexure P-18) was passed on the wrong notion that the petitioner is claiming the benefit of the gap period after discharge from the army till the joining in the civil services. The Rule itself makes it clear that the said period is to be computed for the purpose of pension subject to the certain conditions. As per the conditions, the petitioner should not have earned the pension under the military Rules. In the present petition, the petitioner has not earned any such pension. Second is that the bonus and the gratuity paid in respect of the military service shall have to be refunded to the State Government. It is stated by the learned counsel for the petitioner the said amount has already been deposited with the respondents/state.

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The matter was consider by this Court by the Division Bench of this Court in CWP No. 17529 of 2000 titled as Kuldip Singh Uppal Vs. State of Punjab and others vide judgement dated 03.12.2012 (Annexure P-11), whereby the division bench of this Court, while dealing with the same contention raised before the Court regarding the gap period, has observed as under: -

“9. The Counsel appearing for respondent No. 2 submits with vehemence that the petitioner was relieved from the military service on 1.7.1969 and joined the PCS (Judicial Branch) on 7.10.1977 and there was a gap of about eight years, after he was demobilised from the army service. Therefore, relying upon Sub Clause 3 of Clause (iii) Rule 4 of the Rules of 1965 it is contended that the petitioner would not be entitled to count the length of his army service towards pensionary benefits. This argument in our considered view, is wholly misconceived on a plain reading of the sub clause which only enables the addition of extra years for counting length of service for pensionary benefits if the conditions laid down therein are fulfilled, but not at all effect the benefit of 'military service' towards pensionary benefits under the main Rule. It would be for the competent authority, however to give benefit of one year or three years in addition thereto under the said clause.”

In the said case also, the benefit of the Rules 1982 were sought to be applied. The petitioner of the said case had served the military from 09.02.1964 to 01.07.1969 and joined the PCS (Judicial Branch) on 07.10.1977.

Learned State counsel has argued that the benefit of the Rules of 1982 shall be available to those persons who were appointed in the Government service against the reserved vacancies and were in service as on 01.11.2011.

The said Rule 8 (b) was added in the Rules 1982 w.e.f. 10.04.2012 in the said Rules 1982.

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The perusal of the impugned order shows that the claim of the petitioner was rejected by applying Rule 8 (b) of the Rules, 1982, assuming that it is applicable in case of the petitioner. Rule 8 (b) is a beneficial provision and the benefit of the same cannot be restricted to a person who joined on a particular date i.e. 01.11.2011. The petitioner had joined the army on the call of the nation during the second national emergency. The said service is otherwise under the Union of India and is to be treated as qualifying service for the purpose of grant of pension. Respondents have already granted benefit of said service for seniority and pay fixation. Now the same benefit cannot be denied for pension.

Consequently, the present petition is allowed. The respondents are directed to count the service of the petitioner from 30.04.1972 to 27.07.1977 i.e. during the second national emergency as a qualifying service for the purpose of pension. Accordingly, after adding the said service, pension of the petitioner shall be recalculated and the revised pension and other pensionary benefits shall be paid to the petitioner. The arrears thereafter shall be paid to the petitioner with interest @ 9% per annum starting 38 months prior to the filing of CWP No. 14393 of 2012 i.e. the first writ petition filed by the petitioner. The needful be done within four months from the date of receipt of certified copy of this order.

February 9, 2017

Suresh Kumar

**[KULDIP SINGH]
JUDGE**

Whether speaking / reasoned :

✓
Yes / No

Whether Reportable :

✓
Yes / No