

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

CWP No. 80 of 2014

Date of Decision: 27.02.2017

RAJ KUMAR

...Petitioner

VS.

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

Ms. Vandana Malhotra, Addl. A.G., 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 quashing of the impugned letter dated 23.12.2013 (Annexure P-3) vide which the claim of the petitioner for grant of increments and pension in respect of the military service rendered by the petitioner, during the second national emergency, has been rejected. The prayer has also been made for issuance of writ in the nature of mandamus for directing the respondents to grant increments and pension for the military service rendered during the second national emergency alongwith interest.

The petitioner joined the armed force on 30.11.1967 and was finally discharged from the military service on 10.07.1974 on extreme compassionate grounds. Thereafter, he joined the civil services with the Agriculture Department in the State of Punjab Government on 31.08.1976 as Tractor Driver on regular basis. Later on, Agriculture Department, Punjab was bifurcated and Horticulture Department was carved out from the

CWP No. 80 of 2014

Agriculture Department. As a result of this bifurcation, the services of the petitioner were transferred to the Horticulture Department, Punjab. After rendering about 29 years of service, the petitioner retired from service as a Tractor Driver on 31.07.2005 on attaining the age of superannuation.

According to the petitioner, the Punjab Government has issued a notification dated 15.10.2009 (Annexure P-1) for granting the benefit to the ex-servicemen who have served the nation during the second national emergency w.e.f. 03.12.1971 to 25.03.1977 and subsequently joined the civil services. On 17.11.2013, after coming to know about the said notification, the petitioner approached the respondents for grant of the benefit of his military service rendered during the second national emergency but the same was rejected vide letter dated 23.12.2013 (Annexure P-3). Hence, this present writ petition.

In the reply, it is stated that the petitioner was discharged on extreme compassionate ground at his own request. The respondents have relied upon the Rule 8-B and its sub clauses (a) and (b) of the Punjab Recruitment of Ex-Servicemen Rules, 1982, (hereinafter referred as “Rules 1982”), which were amended vide notification dated 15.10.2009. Clause (b) of the said Rule shows that the military service shall be counted towards pension only in case of appointment under the permanent post in the Government subject to certain conditions.

The respondents have not denied the fact that the petitioner has made a representation. It was stated that the petitioner left in the middle of the emergency on extreme compassionate ground before the second

CWP No. 80 of 2014

emergency ceased to exist i.e. 25.03.1977. Therefore, the petitioner is not entitled to the said benefit.

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

Rule 8 (B) as amended vide notification dated 15.10.2009 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*

CWP No. 80 of 2014

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

Clause (b) of the said Rule shows that the period of military service rendered during the second national emergency has to be counted for increments and pension. For increment there are conditions laid down in Clause (a) and for the purpose of pension the conditions laid down Clause (b) of the Rules, 1982.

Learned counsel for the petitioner states at Bar that the petitioner has not earned any pension under the military rules and that he is also willing to deposit the amount of gratuity or bonus so received by him. Therefore, in terms of the Rule 8 (b) of the Rules, 1982, the services of the petitioner rendered during the second national emergency are liable to be counted as qualifying service for the purpose of pension subject to the petitioner depositing the bonus or gratuity received by him with the respondent department with interest as per government instructions. Mere fact that the petitioner was discharged on extreme compassionate grounds before the emergency ceased to exist is not a ground to decline to compute the said military service as a qualifying service for the pension.

It being so, the impugned letter dated 23.12.2013 (*Annexure P-3*) is hereby set aside and on the deposit of said bonus or gratuity, granted to the petitioner under the military Rules, with interest, the services of the petitioner rendered during the second national emergency are ordered to be counted as qualifying service for grant of pension and other service benefits.. Accordingly, after adding the said service, pension of the petitioner shall be

CWP No. 80 of 2014

recalculated and the revised pension and other pensionary benefits shall be paid to the petitioner.

Since, the petitioner approached this Court by way of filing of this writ petition, in the year 2014, therefore, the petitioner will not be entitled for any interest on the arrears from the date of his retirement i.e. 31.07.2005 till the date of filing of the present writ petition i.e. 08.01.2014. Thereafter, interest on the delayed payment of retiral dues shall carry interest @ 9% per annum till the date of actual payment.

In view of the above, the petition stands allowed.

February 27, 2017
Suresh Kumar

(KULDIP SINGH)
JUDGE

<i>Whether speaking / reasoned</i>	:	✓ Yes	/	No
<i>Whether Reportable</i>	:	✓ Yes	/	No