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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-24502-2015
Date of Decision : October 31, 2018

Piara Singh
..... Petitioner.

Versus

Punjab State Power Corporation Limited
and others.
..... Respondents.

2. CWP-24586-2015

Gurcharan Singh
..... Petitioner.

Versus

Punjab State Power Corporation Limited
and others.
..... Respondents.

3. CWP-24779-2015

Sukhwinder Kaur
..... Petitioner.

Versus

Director General of Police, Punjab Police Head Quarter
and others.
..... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Rajesh K. Dadwal , Advocate

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for the petitioners.

Mr. Vikas Chatrath, Advocate,
for the respondents in CWP No. 24502 and 24586 of 2015)

Mrs. Anju Arora, Addl. AG, Punjab
for the respondents in CWP No. 24779 of 2015.

SHEKHER DHAWAN, J.

As common questions of law and facts pertaining to counting of military service rendered during the 2nd National Emergency towards pensionary benefits are involved in the above titled three writ petitions, the same are disposed of by this common order. For facility of reference, facts are being taken from **CWP-24502-2015**, Piara Singh Vs. Punjab State Power Corporation Limited and others.

2. Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing order dated 27.03.2015 (Annexure P/2) and for issuance of directions to the respondents to count the military service rendered during the 2nd National Emergency from 3.12.1971 to 25.03.1977 towards pensionary benefits as per order dated 13.11.2014 (Annexure P/1) passed by this Court in CWP-17661-2013, **Rajinder Singh Vs. State of Punjab and others.**

3. As per the petitioner, he was enrolled in the Indian Army as Sepoy on 16.01.1968 and was discharged on 01.09.1984. The petitioner had also participated in the Second National Emergency from 03.12.1971 to 25.03.1977. After retirement from Army, he was enrolled as Security Guard with respondents No.1 to 3 on 11.08.1992 and ultimately he retired

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on 31.12.1997 and after retirement PPO No.12010/0708 was issued to him. Government of Punjab, Department of Defence Service Welfare (Defence Welfare Branch) issued a notification dated 15.10.2009, whereby Rule 8-B was incorporated in the Punjab Recruitment of Ex-Servicemen Rules, 1982 and as per the Punjab Recruitment of Ex-Servicemen Rules (First Amendment) Rules, 2009, Military Service rendered during the Second National Emergency period from 03.12.1971 to 25.03.1977 was to be counted for increment and pension purpose. The petitioner had also rendered service during the Second National Emergency during the aforesaid period. The said Rules were again amended in the year 2012 and Punjab Recruitment of Ex-Servicemen (First Amendment) Rules, 2012 were made effective w.e.f. 1.12.2011 and that amendment was applicable only and those Ex-Servicemen, who were in service of the Government on December 12, 2011 or appointed thereafter.

4. As per the petitioner, similarly situated persons filed CWP-17661 of 2013 before this Court and the said writ petition was allowed and the petitioners (herein) were held entitled to the benefit of Military Service. The petitioner in this case had also filed CWP-13030 of 2014 for counting his Military Service period and directions were issued by this Court to consider the claim of the petitioner within a period of three months from the date of receipt of order. The respondents had not decided the claim of the petitioner and he filed COCP-58 of 2015. Thereafter, the petitioner came across with judgment dated 13.11.2014 passed in CWP-17661-2013 and issued a letter dated 07.02.2015 to the respondents. The respondents

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rejected the claim of the petitioner vide order dated 27.03.2015 (Annexure P2) and as such, the petitioner has filed this writ petition.

5. The petitioner is seeking the relief of Military Service having been rendered by him on the basis of Government instructions and judgment of this Court in CWP-17661-2013 on the ground of parity with other similarly situated employees, though the same has not been granted to him.

6. In the reply, respondents have taken the plea that the Government of Punjab, Department of Personal & Administrative Reforms and issued rules regulating recruitment of Ex-servicemen to the State Civil Services and posts connected with affairs of the State of Punjab in 1982, which were amended time to time. Rule 8 of the aforementioned Rules stated about the pay, increments and pensions etc., and as per the said Rules increments were to be granted only to those persons who had rendered the service during the period from 03.12.1971 to 25.03.1977. Further benefit was given at the time of making first appointment on regular basis on other post or service under the Government. The other relevant condition was that the period between the date of discharge from Military Service and the date of appointment to any service or post under the Government was not to exceed one year. The respondents also took the plea that this benefit could not be given to the petitioner as he had not joined the Military Service during the period of Second Emergency but the petitioner herein had joined the Military Service on 16.01.1968 i.e., much prior to the declaration of Second Emergency. More so, the petitioner was

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discharged from Military Service on 1.9.1984 and was appointed as Security Guard on 11.8.1992, i.e., after a gap of about 8 years and on that ground, the writ petition is liable to be dismissed.

7. Plea was also taken by the respondents in the written statement that the petitioner in this case had superannuated on 31.12.1997, but the writ petition was filed in the year 2015 i.e., after 18 years from the date of retirement and the said unreasonable delay remained unexplained.

8. Contention was also raised in the written statement that the relevant rules require that the benefit is to be given in a particular manner and the same must be done in that manner and if at all, the petitioner was aggrieved of some rules, he was to challenge the vires of the relevant rules and no relief can be given in the present writ petition. As such, the present writ petitions be dismissed.

9. Learned counsel for the petitioner, while reiterating the above facts, added that in identical matter in **Rajinder Singh Vs. State of Punjab and others**, CWP No. 17661 of 2013, decided on 13.11.2014 (Annexure P/1) Hon`ble Division Bench of this Court observed as under:-

“ It is the admitted position that none of the petitioners were in the service of the government as on 1.12.2011 as all of them had retired earlier. However, so far as the pension is concerned, as there is no stipulation in the 2009 Rules that the benefit of military service during the Second National Emergency towards pension would be given only to those incumbents who joined the military service during the Second National Emergency period, all the petitioners would be entitled to the grant of military service benefit

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towards pension.”

10. The same view was taken by this Court in **Jagtar Singh Vs. Director General of Police and others**, CWP No. 18584 of 2015, decided on 26.10.2016.

11. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the basic facts that the petitioner herein joined Military Service on 16.1.1968, meaning thereby he had not joined the Military Service during the Second National Emergency period i.e., 3.12.1971 to 25.03.1977. It is also not disputed on fact that the petitioner after discharge from the Military Service on 1.9.1984 was enrolled as a Security Guard with respondents No.1 to 3 on 11.08.1992 and finally retired on 31.12.1997. The time gap between the discharge from Military Service and joining the civil post by the petitioner as Security Guard is more than 8 years.

12 Relevant Rule 8 of the Rules relating to recruitment of Ex-servicemen to the State Civil Services and posts connected with the affairs of the State of Punjab is extracted below :-

“8. Pay - The pay of Ex-servicemen appointed against reserved vacancy shall be fixed in accordance with provisions of Chapter VII of Punjab Civil Services Rules, Volume II.

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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

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be paid to those persons only, who joined and 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 the 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 of 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 as per orders of the government.”

13. The above rule makes it ample clear that the benefit of Military Service can be extended only to those candidates, who had joined the Military Service during the emergency period and not prior to or after that. But in this case, the petitioner had joined Military Service much before the second emergency and as per the aforesaid rules, the said service cannot be considered for counting Military Service under the rules. The other disabling clause for the petitioner is that as per clause (iii), the time gap

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between the date of discharge from Military Service and the date of appointment to any civil post under the Government was not to exceed one year, but in this case, it is about 8 years and as per the rules, the petitioner is not entitled for the relief claimed.

14. Similar matter was before Hon`ble Full Bench of this Court in **Punjab State Power Corporation Limited, Jalandhar Vs. Waryam Chand, LPA No. 1042 of 2012**, decided on March 12, 2013, wherein identical question of facts and law was involved and the Hon`ble Full Bench observed as under:-

“ Thus, the amended Rule 8-B (a) now provides that the increment for aforesaid service shall be paid to those persons only who rendered service during the aforesaid period as words “joined and” have been deleted. What is allowed by this amendment is taken away by introducing another amendment. In clause (b) a further sub-clause (iii) has been added to provide that:

“these benefits shall be available to all the persons who were appointed in the Government service against reserved vacancies and were in service as on 1.12.2011 or are appointed thereafter”. There is also a proviso under this sub-clause, which states “provided that these benefits shall be admissible for pay fixation on notional basis with effect from 1.1.2012 and arrears on account of pay shall not be paid”.

Accordingly, the benefits which otherwise may have accrued to the petitioners have been taken away by sub-clause (iii) reproduced above.”

15. Hon`ble Full Bench further observed that as the petitioners (therein) were aggrieved of relevant rules, they shall have to challenge the said rules because the rule otherwise dis-entitles them to claim the benefit

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and the relief claimed in the writ petition cannot be allowed. Similar view was taken by Hon`ble Apex Court in **Chittaranjan Singh Chima Vs. State of Punjab, 1997(2) SCT 88** and Division Bench judgment of this Court in **Dhani Ram Chaudhary Vs. State of Haryana and another, 2005(1) SCT 571.**

16. This Court also cannot ignore the fact that the petitioner herein retired from service on 31.12.1997 but the writ petition has been filed after about 18 years and there is no reasonable and explainable ground to condone this delay and laches and the present writ petition is liable to be dismissed on this score as well.

17. Resultantly, in view of the discussion, there is no merit in the present writ petitions and the same stand dismissed

(SHEKHER DHAWAN)
JUDGE

October 31, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes