

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

(107)

CWP-15005-2019

Date of Decision: July 17, 2019

Bachan Singh and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Dilpreet Singh Gandhi, Advocate, for the petitioners.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the prayer which is being made by the petitioners is for directing respondents for taking into consideration the military service rendered by them during the 2nd emergency from 03.12.1971 to 25.03.1977 as a qualifying service for the grant of pensionary benefits.

As per the averments made in the writ petition, the petitioners are ex-servicemen and had served Indian Army for a period of 15 to 20 years and had also worked during the 2nd emergency in the Indian Army, which was declared while they were already in service. After the petitioners were discharged from service, they were recruited by the State of Punjab on different posts, which were kept reserved for the ex-servicemen. After their recruitment, petitioners discharged their services and have already retired from the service of State of Punjab as well. The claim of the petitioners in the present writ petition is that the services, which the petitioners had rendered with the Indian Army during the period of 2nd emergency, should be counted as a qualifying service for the grant of pensionary benefits by the Government of Punjab.

As the benefits, which the petitioners were claiming, were not

being given, writ petitions were filed by the petitioners, being CWP No.3984 of 2017, which was disposed of by this Court on 01.03.2017 directing the respondents to decide the claim of the petitioners as raised by them in their representation dated 07.12.2016 by passing a speaking order within a period of two months from the receipt of copy of the order.

Respondents considered the claim and passed a detailed order on 09.04.2019, rejecting the claim of the petitioners on the ground that the petitioners do not fulfil the conditions, as required under Rule 8 (B) of the Punjab Recruitment of Ex-Servicemen Rules, 1982 as amended vide Punjab Recruitment of Ex-Servicemen (First Amendment) Rules, 2006 (hereinafter referred as '1982 Rules' as amended from time to time) and therefore, petitioners were held not entitled for the grant of the benefit of military service, which they had rendered during the period of 2nd emergency as a qualifying service for the grant of pensionary benefits by the State of Punjab.

Learned counsel for the petitioners argues that the case of the petitioners has wrongly been rejected by the respondents on the ground that they do not fulfil the necessary conditions as required under the Rule 8 (B) of the 1982 Rules as amended from time to time. As per Rule 8 of 1982 Rules as amended in the year 2006, the ex-servicemen is entitled to count the military service rendered during the emergency for the purpose of increment or pension. Rule 8-A, which deals with the grant of the said benefit is as under:-

8-A, Increments and pension— Period of military service rendered during the First National Emergency from 26th October, 1962 to 9th January, 1968 shall count for increments and pension as under

(i) **Increments** - *The period spend by a person on military service (restricted to emergency period from 26th October, 1962 to 9th January, 1968) 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) **Pension** - *The period of military service mentioned in clause shall count toward pension only in the case of appointments to permanent services of posts, subject to the following conditions:-*

(i) *The person concerned should not have earned a pension under military rules in respect of the military service in question.*

Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government.

(ii) *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.*

This benefit shall be applicable to all those who were appointed in Government services before or after 11th February, 1982.”

Rule 8-A reproduced above deals with the first emergency and the period is from 26.10.1962 till 09.01.1968.

Further Rule 8-B deals with the second emergency, which remain in operation from 03.12.1971 till 25.03.1977. Rule 8-B is as under:-

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

A bare perusal of the above Rule would show that for the period, which an employee had rendered in the Indian Army during the period of 2nd emergency, he will only be entitled in case he is not getting a

pension under the Military Rules, in respect of the military service in question.

Learned counsel for the petitioners very fairly states that petitioners are getting the benefit of pension for the military service which they had rendered, which period includes the 2nd emergency period as well.

Once, the petitioners are getting the pension for the military service, which they had rendered during the 2nd emergency and the Rule postulates that only the ex-servicemen who are not getting any pension from the Army in respect of the period which they have served during the 2nd emergency, will be entitled for counting the period as a qualifying service for the grant of pension by the Government of Punjab, petitioners are not eligible.

Nothing has been shown to this Court as to how the petitioners are entitled for the grant of benefit, which is being sought in the present writ petition and how the order, rejecting the claim by the respondents dated 09.04.2019 (Annexure P-13) is bad in law.

Learned counsel for the petitioners argues that the State of Punjab has taken into account the period of military service of the ex-servicemen which they had rendered during the emergency as a qualifying service for the grant of pensionary benefits though ex-servicemen were also getting the pension from Govt. of India.

Nothing has been shown to support the said arguments. In the present writ petition, no details of anyone, who according to the petitioners, who though was getting the pension in respect of the military service for the period he had remained in Army (during the emergency period), has also been granted the benefit of counting the said service as a qualifying service

for the grant of pensionary benefits by the State of Punjab. In the absence of any material on record, no benefit can be granted.

Furthermore, petitioners have to get the relief on the basis of rules and regulations which govern the service and not if some one has wrongly been granted the benefit.

Counsel for the petitioners very fairly admits that under the Rules, they are not entitled, as the petitioners are getting the pension for the military service even for the period of 2nd emergency, which period they want to compute as a qualifying service for the grant of pension by the Govt. of Punjab. Entitlement of the petitioners is to be seen on the basis of rules and regulations and not on the basis if anyone, who though not eligible, might have been granted the benefit.

It is again repeated that the petitioners have failed to place on record any material that anyone, who was ineligible, has been granted the benefit by the Govt. of Punjab.

In view of the above, no ground is made out for interference.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

July 17, 2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No