

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP No.18649-2015

Date of Decision: January 31, 2019

Banta Singh

.....Petitioner(s)

versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Varinder Shukla, Advocate
for the petitioner.

Ms. Deepali Puri, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI , J. (Oral)

In the present writ petition, the prayer made by the petitioner is to grant him the benefit of military service towards increments and pension and the said service which the petitioner has rendered from 1963 to 31.05.1978, should be treated as qualifying service for the grant of increment and pension to the petitioner.

2. The facts which have been narrated in the present petition are that the petitioner served in Defence Security Corps from 17.05.1963 to 31.05.1978. After the discharge from Defence Security Corps, the petitioner joined as a *Chowkidar* in the Department of Food and Civil Supplies, Punjab on 01.06.1979. The petitioner kept on working there till he retired on attaining the age of superannuation i.e. 31.10.1988. Petitioner claimed the pensionary benefits after his retirement on 31.10.1988. All the other benefits were granted to him

but pension was denied on the ground that the petitioner has less than 10 years of service with the Department of Food and Civil Supplies, Punjab and therefore, he is not entitled for the grant of the pension in view of provisions of Punjab Civil Services Rules.

3. In the present writ petition, the claim has been made that the petitioner is entitled for counting the service, which the petitioner rendered with the Defence Security Corps from 1963 to 1978, as the qualifying service in view of Punjab Government National Emergency (Concession) Rules, 1965, later on amended under the Punjab Recruitment of Ex-serviceman Rules, 1982.

4. Learned counsel for the petitioner contends that the case of the petition is squarely covered by 1965 Rules for computing the service rendered by him in the Defence Security Corps from 1963 till 1978 and therefore, the petitioner should be granted the benefit of pension as well.

5. Upon notice of motion, the respondents have filed reply and claim of the petitioner has been contested by the respondent stating that the petitioner is not entitled for counting the service, which he had rendered with Defence Security Corps from 17.05.1963 to 31.05.1978 as the same is not covered either under 1965 Rules or under 1982 Rules and therefore, the said period cannot be treated as a qualifying service.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. It has been admitted by the petitioner during the course of the arguments that the petitioner has not served Indian Army from 17.05.1963 to 31.05.1978 as mentioned in Paragraph 2 of the Writ Petition. In fact, learned counsel for the petitioner admits that the petitioner served Defence Security Corps for the above said period, which is a separate entity than the Indian Army.

8. Learned counsel for the petitioner states that the service which the petitioner rendered with the Defence Security Corps from 1963 to 1978 is to be counted keeping in view the Punjab Government National Emergency (Concession) Rules, 1965. In order to appreciate the said arguments, Rule (2) which give the definition of the Military Service is reproduced hereunder:-

: RULE 2:- Definition:- *For the purposes of these rules, the expression 'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a warrant officer) rendered by a person during the period of operation of the Proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962, or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service."*

RULE-4 Increments, seniority and pension-

Period of military service shall count for increments, seniority and pension as under:-

(i)Increments:- The period spent by a person on military service, 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) Seniority:- The period of military service mentioned in clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.

(iii)Pension:- The period of military service mentioned in clause (i) shall count towards pension only in the case of appointments to permanent services or posts under the Government subject to the following conditions:-

(1) the person concerned should not have earned a pension under military rules in respect of the military service in question;

(2) any bonus or gratuity paid in respect of military service by the defence authorities shall be to be refunded to the State Government;

(3) 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 Government.”

9. A bare perusal of the above mentioned rule would show that in the definition of the Military, the service rendered in any of the three wings of the Indian Armed Forces is to be taken into account for the grant of benefit. The three wings of the Indian Armed Forces are Army, Navy and Air Force. The Defence Security Corps is not wing of the Indian Armed Forces. Therefore, a bare reading of Rule (2) makes it clear that the case of the petitioner is not covered under the 1965 Rules for the grant of benefit of military service rendered by the petitioner from 17.05.1963 to 31.05.1978 in the Defence Security Corps.

10. The second argument raised by learned counsel for the petitioner is that Government of Punjab had framed Punjab Recruitment of Ex-serviceman Rules 1982. Those rules came into force in February 2 ,1982. Definition of the Ex-serviceman as given in 1982 Rules is as under :-

(c) "Ex-serviceman" means a person who has served in any rank, whether as a combatant or a non-combatant, in the Naval, Military and Air Forces of the Union of India (hereinafter referred to as the Armed Forces of the Union of India), and who has,-

(i) retired or released from such service at his or her own request after earning his or her pension; or

(ii) has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or

(iii) been released, otherwise than on his own request, from such service as a result of reduction in establishment; or

(iv) been released from such service after completing the specific period of engagement otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity; But does not include a person who has served in the Defence Security Corps, the General Reserve Engineering Force, the Lok Sahayak Sena and the Para Military Forces, but includes personnel of the Lok Sahayak Sena of the following categories, namely :-

(i) pension holders for continuous embodied service.

(ii) persons with disability attributable to military service; and

(iii) gallantry award winners”

11. A bare perusal of the above Rules would show that the personnel who served Defence Security Corps have been excluded from the definition of Ex-serviceman under 1982 Rules.

12. Learned counsel for the petitioner has not been able to rebut that neither under 1965 Rules nor under 1987 Rules reproduced above, the case of the petitioner is covered for grant of the benefit.

13. The third argument which has been raised by learned counsel for the petitioner is by relying upon the Instructions which have been issued by the office of Controller of Defence (Pension) Accounts. A circular has been issued by the Controller of Defence (Pension) Accounts on 04.02.2016 in respect of grant of one rank one pension. Learned counsel for the petitioner is mis-

interpreting the said circular to mean that by this circular, the Defence Security Corps have been treated as a part of the Indian Armed Forces. No such provision has been pointed out that the Defence Security Corps is to be treated as a part of the Indian Armed Forces for grant of pension. The letter dated 04.02.2016 only states that whosoever has retired from various organisations, they will only be entitle for one rank one pension. The circular does not help the petitioner in any way to seek the relief, which is prayed in the present writ petition.

14. In view of the above, the claim made by the petitioner is not supported by the Rules governing the service and therefore, no benefit can be granted to the petitioner.

15. Dismissed being without any merits with no order as to cost.

January 31, 2019
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[HARSIMRAN SINGH SETHI]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes