

(1)**CWP-18636-2019****Date of decision: 24.07.2019****SUKHDEV SINGH****...PETITIONER****VERSUS****STATE OF PUNJAB AND OTHERS****...RESPONDENTS****(2)****CWP-18628-2019****ANGREJ SINGH****...PETITIONER****VERSUS****STATE OF PUNJAB AND OTHERS****...RESPONDENTS****(3)****CWP-13863-2019****BALBIR SINGH****...PETITIONER****VERSUS****STATE OF PUNJAB AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI****Present:** Mr. P.S. Khurana, Advocate for the petitioner.**********HARSIMRAN SINGH SETHI,J. (ORAL)**

By this common order, the above mentioned three writ petitions which involve the same question of law and similar facts are being decided. For the purpose of this order, the facts from CWP No. 18636 of 2019 are being taken.

The grievance which is being raised by the petitioner in the present writ petition and the other connected petitions is that the benefit of the service, which the petitioner had rendered during the Second National Emergency while working in the Army, has not been taken into account as a qualifying service for

said benefit under the Punjab Recruitment of Ex-servicemen Rules, 1982, as amended from time to time.

As per the facts stated in the writ petition, petitioner was enrolled in the Indian Army on 19.11.1963. Petitioner remained working in the Indian Army till he was discharged on 30.11.1987. After being discharged from Army, petitioner was recruited as a Peon by the respondents-State of Punjab on 19.12.1990. Petitioner performed his duties as a Peon and retired from the service on attaining the age of superannuation on 30.11.2005. Petitioner has duly been paid the pensionary benefits by the State of Punjab for the service, which the petitioner rendered from 19.12.1990 till 30.11.2005. As per the averments made in the writ petition, the petitioner claims that under Punjab Recruitment of Ex-servicemen Rules, 1982, as amended from time to time, petitioner was entitled for the grant of benefit of the period during which the petitioner had served Indian Army from 03.12.1971 till 25.03.1977 i.e. during the second emergency, to be treated as qualifying service, for the grant of pension. For the grant of the said benefit, he submitted a representation on 20.02.2018 with the respondents. As the claim of the petitioner was not being accepted by the respondents, petitioner has filed the present writ petition seeking the direction to the respondents to grant the petitioner the benefits of the period, which the petitioners served in the Indian Army during the Second National Emergency from 03.12.1971 to 25.03.1977 by treating the same to be qualifying service for computing pension.

I have heard the counsel for the petitioner and have gone through the record with his able assistance.

Before advertng to the entitlement of the petitioner for the grant of the benefit of service, which the petitioner had rendered during the Second National Emergency for computing his pension, the relevant rules in this regard are necessary to be adverted. Rules under which petitioner is seeking claim are the

rules known as Punjab Recruitment of Ex-servicemen Rule, 1982 hereinafter referred as 1982 Rule. These rules have been amended from time to time. Rule 8-B of the said rules gives the right to an employee, who has worked with the Indian Army during the Second Emergency from 03.12.1971 to 25.03.1977, after he retires from the Civil post for computing his pension by giving the benefit of said period as a qualifying service for computing pension and increments. The said 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 Rule 8-B would show that the grant of benefit of military service towards pension is subject to three conditions. In case, the employee does not fulfill the said conditions, he will not be entitled for the benefit of computing the Military Service rendered by him in the Army during the Second National Emergency while calculating his pension after being retired from the Civil post by the State of Punjab. As per Clause Rule 8-B (i), the employee should not have earned pension under the Military Rule in respect of the Military Service in question i.e. period of Second Emergency. It has been fairly admitted by the counsel for the petitioner that the petitioner not only in the present writ petition but in the other connected petitions are also getting the pension for the Military Service, which they had rendered, which includes the period of the Second National Emergency from 03.12.1971 to 25.03.1977. Once, petitioners are getting the pension for the said period, which period they want to be taken into account by the respondents-State for computing their pension, after being retired from the civil post, the same is not admissible under the rules. No employee can get benefit of same period of service for taking two pensions and therefore, the claim which is being advanced by the petitioner is not covered by the rules.

Counsel for the petitioner argues that the petitioners are entitled for the

date of discharge from the military service and the date of appointment to any service or a post under the Government shall count for pension provided such period does not exceed one year and any period exceeding one year but not exceeding three years can be allowed to be counted for pension in exceptional cases under the orders of the Government. The said claim of the petitioner is also misplaced. First of all, the petitioner in the present writ petition was discharged on 30.11.1987 and he was recruited as a Peon by the State of Punjab on 19.12.1990. Therefore, the said period is beyond three years and therefore, the claim of the petitioner is not covered even under Rule (iii). Similar are the facts of the petitioners in other writ petitions as time period between their discharge from military service and joining the State of Punjab is more than three years.

Furthermore, in order to claim benefit under Rule 8-B (b), a candidate has to satisfy all the three conditions and in the present writ petition, the petitioners do not fulfill any of the conditions as envisaged under Rule 8-B of 1982 Rules for the grant of benefit. Therefore, the claim of the petitioners for giving them benefit of military service which they had rendered during the Second National Emergency as a qualifying service for computing pension is totally misplaced and is liable to be rejected and is rejected.

In view of the above, the writ petitions are dismissed but without there being any order as to costs.

24.07.2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No