

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 17.07.2019****CWP No.3701 of 2015**

Parkash Singh

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Mohinder Pal, Advocate, for the petitioner.

Ms. Simran Grewal, AAG, Punjab.

Mr. G.S.Attariwala, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioner retired from service as a Senior Assistant from Sessions Division, Bathinda in November, 2013. In 2015, he filed this petition claiming re-fixation of his pay w.e.f. 01.04.2003 and to revise his pension and other consequential benefits.

2. Earlier, the petitioner had served in the Indian Army from January, 1974 to October, 1989. After serving for almost 15 years and 9 months, he was discharged from service of Army. In the year 1994, he was appointed as Clerk-cum-Typist, but was retrenched from service for want of vacancy. Later on, he was again appointed as Clerk-cum-Typist in the Sessions Division, Bathinda by order dated 24.02.1995. At that time, the essential qualification for appointment to the post of Clerk was Matriculation. Admittedly, in his application form, he has mentioned his

qualification as matriculate and had passed B.A. Ist year. Thus, it appears that he was appointed on the basis of his matriculation certificate.

3. He relies on a Indian Army Graduation Certificate dated 18.12.1992, which makes Ex-serviceman, who are matriculate (which term includes an ex-servicemen who have obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Indian Navy or the Indian Air Force) and have put in not less than 15 years of service in the Armed Forces of the Union, may be considered eligible for appointment to any reserved vacancy in Group 'C' post for which the essential qualification is Graduation and where experience of technical or professional nature is not essential. He claims equivalence of his Indian Army certificate with Graduation. By this certificate, the petitioner's case was recommended for considering him educationally qualified for Group 'C' post where the prescribed qualification is Graduation. This certificate was not relied upon by the petitioner at the time of his appointment as Clerk-cum-Typist. Nor was it produced even at the time of making a representation on 28.02.2006 (Annex P-4) requesting the authority to compare his case with one Sunil Kumar, Ahlmad, who was junior to him and was drawing more pay than him w.e.f. 22.07.2005.

4. It may be mentioned that on 22.07.2005, the Shetty Commission recommendations for the subordinate courts was notified by the State of Punjab. The Shetty Commission gave higher pay to the graduate employees working in the Sessions Division/s. In response to the representation of the petitioner dated 28.02.2006, he was informed by letter dated 01.04.2006 (Annex P-5) through the Additional District & Sessions Judge, Bathinda, with whom the petitioner was posted, that his junior Sunil

Kumar drew higher pay on the basis of the directions of the Supreme Court in Writ Petition (C) No.10222 of 1989 titled 'All India Judges' Association Vs. Union of India & others'. The petitioner through this letter was also asked to intimate whether he was a graduate and if he was, to submit attested copies of his graduation certificate. The petitioner did not respond to this letter till he wrote letter on 09.03.2011 (Annex P-6) i.e. almost after 05 years, requesting for upgradation in the pay scale of Rs.5000-8100/- w.e.f. 01.04.2003 to consider him as a Graduate Clerk. However, such request of the petitioner was returned by directing him to move the application after getting recorded his requisite educational qualification in the service record.

5. On 06.05.2013, the petitioner again submitted an application claiming now parity with Baljinder Singh, Nazir. The request of the petitioner for placing him in the scale of Rs.5000-8100/- w.e.f. 01.04.2003 was declined vide order dated 15.04.2014 passed by the District & Sessions Judge, Bathinda.

6. Presently, the case of the petitioner depends on him establishing parity with the case of Baljinder Singh. Facts reveal that Baljinder Singh was an Ex-serviceman. He was appointed as Clerk in the same Sessions Division on the basis of equivalence given by the Indian Army. An additional affidavit was called by this Court in the present case. The affidavit of the District & Sessions Judge, Bathinda dated 04.05.2018 has been filed averring in the concluding part of para 4 that the case of the petitioner cannot be said to be at par with the case of Baljinder Singh, LRC, but deputed to work with Nazir, as he had produced the certificate issued by the Army at the time of his recruitment into service, whereas the petitioner has claimed the benefit of the Army Certificate after 17 years of his recruitment

into service. It was for the petitioner to produce this certificate at the time of his appointment into service showing that he is Graduate or equivalent, but he only mentioned his qualification as B.A.-Ist. The affidavit declares that Baljinder Singh is the only candidate in the Sessions Division, Bhatinda who possessed equivalent Graduation certificate based on the service rendered in the armed forces issued by the Army. And it was he alone, who was extended the benefits of higher pay scale w.e.f. 01.06.2010 i.e. from the date of his joining service. The then learned District & Sessions Judge, being the appointing authority, vide order dated 08.05.2010 appointed Baljinder Singh as Clerk in the pay scale Rs.10300-34800+3200 GP, which was prevailing pay scale and grade pay at that time. It was after the appointment of Baljinder Singh, that the petitioner came forward in 2011 with his request claiming parity in pay. For that purpose he got the certificate of 1992 attested in 2011 and has produced the same on the present file as an annexure.

7. The petitioner's reliance on Rule 7 (2) of the Punjab Recruitment of Ex-servicemen Rules, 1992 is contested by the respondents on the submission that the said Rule applies only to 'appointment' and not in the matters of pay fixation. The Rule only helps to bring Ex-serviceman into civil service and that is all it is meant to do. In the present case, the petitioner has been appointed into civil service on the basis of his matriculation certificate or at the best his B.A.-Ist which is far short of a recognized graduation degree.

8. The respondents in their written statement have correctly reasoned that the petitioner for reasons best known to him kept silent regarding his qualification as a graduate for approximately 15 years after

joining service and he filed his first representation in the year 2011 i.e. after six years after the issuance of the notification and after 15 years of his joining service that his qualification be considered as graduation. Though the petitioner counters that first representation was made in 2006 i.e. within one year of the coming into force of the Shetty Commission recommendations, but in his representation dated 28.02.2006, he does not speak of his educational qualification/s and restricts his claim to junior Sunil Kumar getting higher pay than he was getting w.e.f. 22.07.2005. The reason for doing so was intimated to him on 01.04.2006, when he was asked whether he was a graduate. To that he has made no effective answer till today. Neither did he return when asked with his Graduation Certificate issued by the Army authorities to conclusively show that he is a graduate to be entitled to pay re-fixation as claimed by him. Thus, the petitioner's case cannot be treated on par with the cases of Sunil Kumar or Baljinder Singh. Difference in pay on the same post based on qualifications is legally permissible. The Shetty Commission created that pay difference between graduates and non-graduates.

9. Consequently, this petition, on all counts including on delay and laches, fails and is ordered to stand dismissed.

17.07.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No