IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11081-2016
Date of decision: - 15.01.2020

Zora Singh

....Petitioner

Versus

P.R.T.C., Patiala through its Chairman and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. S.S. Grewal, Advocate
for the petitioner.

Mr. Anupam Singla, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J. (ORAL)

The claim of the petitioner in the present writ petition is that while computing his pensionary benefits, he has not been granted the benefit of military service, which he had rendered during the 2nd Emergency from 19.02.1972 to 01.08.1977, which is contrary to the Punjab Recruitment of Ex-servicemen Rules, 1982 (as amended from time to time).

The facts, which have been stated that in the writ petition are that, petitioner joined the Indian Army during the 2nd Emergency on 19.02.1972 and he remained with the Indian Army up to 01.08.1977 and he rendered total 5 years, 5 months and 13 days of service. After being relieved from the Indian Army, petitioner was appointed as a driver with the Pepsu Road Transport Corporation on 21.08.1989 and he continued working as such till he attained the age of superannuation on 30.09.2012. It has been averred by the petitioner in paragraph 2 of the writ petition that keeping in view the fact that petitioner had discharged the duties during the 2nd Emergency with the Indian Army, benefits of the service, which he had rendered with the Indian Army was given to him by changing the date of his appointment from 21.08.1989 to 10.03.1984. Even the seniority of the petitioner was fixed from 1984 onwards and all the increments were given to him from the revised date of appointment i.e. 10.03.1984.

Learned counsel for the parties argues that after the petitioner retired from service, respondents computed the pensionary benefits of the petitioner, but surprisingly his pensionary benefits were calculated by taking the appointment as 21.08.1989 instead of 10.03.1984. The benefit of the said military service, which the petitioner had rendered with the Indian Army during the 2nd Emergency was not taken into consideration. Petitioner approached the respondents for the grant of benefit of the military service rendered by him during the 2nd Emergency as a qualifying service by serving the respondents a legal notice dated 16.12.2015 (Annexure P-7). As the respondents were not accepting the request of the petitioner, he approached this Court by filing the present writ petition claiming the benefit of service rendered by him in Indian Army as a qualifying service for computing the pensionary benefits.

Upon notice of motion, respondents have filed the reply contesting the claim of the petitioner. Respondents in their reply have stated that after the petitioner represented to the respondents for the grant of the benefit of the service rendered by him in the Indian Army, the same was granted to him for seniority and increments and the date of the joining of the petitioner was changed from 21.08.1989 to 10.03.1984. With regard to the counting of the said service as a qualifying service for computing the pensionary benefits, the respondents have stated in the reply that the petitioner was required to give the said option within a period of two months from joining, which was not given and therefore, now after the retirement, the benefits of the military service cannot be granted to the petitioner towards pension. Further, objection has been taken that under the Punjab Recruitment of Ex-servicemen Rules, 1982 (as amended from time to time), an employee who is getting the pension from the Indian Army is not entitled for counting of the said period after retirement by the Government of Punjab and therefore, as the petitioner has not disclosed as to whether he is receiving the pension from the Indian Army or not, the benefit of military service cannot be granted to the petitioner as a qualifying service for computing the pensionary benefits.

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

It is not disputed by learned counsel for the respondents that petitioner had served in the Indian Army during the 2nd Emergency from 19.02.1972 till 01.08.1977. It has been further admitted by learned counsel for the respondents that the benefit of the said service was extended to the petitioner, vide order dated 28.08.2012 (Annexure P-1) and the date of appointment of the petitioner was changed from 21.08.1989 to 10.03.1984 and the benefit of the military service was granted to him towards seniority and the increments. That be so, once the date of appointment of the petitioner has been anti-dated to 10.03.1984 by the respondents themselves, vide order dated 28.08.2012 (P-1), there is no valid justification as to why the same date should not be taken as an entry date into service for counting the qualifying service and computing the pensionary benefits. Once, the date of appointment of the petitioner has been changed to 10.03.1984 by the respondents themselves, they are bound to take the same date as entry into service even for computing the pensionary benefits. It cannot be said that there are two dates of appointment in respect of the petitioner i.e. one for granting seniority & increments and another for granting the pensionary benefits. The date of the appointment has to be the same for grant of all the benefits while in service and the benefits for which an employee becomes entitled for after the retirement. Therefore, once the respondents themselves have fixed the date of appointment of petitioner as 10.03.1984, vide order dated 28.08.2012 (P-1), the same has to taken into account for calculating the pensionary benefits as well.

The second argument raised by learned counsel for the respondents is that the petitioner was bound to exercise option so as to seek the benefit of military service towards pension within a period of two months, which he had failed to do and therefore, he will not be entitled to get the benefit of military service after his retirement.

The said argument is fallacious. Once, the respondents themselves have granted the benefit of military service to the petitioner while he was in service, vide order dated 28.08.2012 (P-1), the said objection is contrary to the facts as the respondents themselves have granted the benefit of military service of the petitioner towards seniority and increments while he was in service and therefore, option for claiming the benefit of the military service for computing the qualifying service was not required to be given again. Therefore, the said objection is not valid for declining the benefit to the petitioner for counting the military service towards pension.

The next argument, which the respondents have raised is that the petitioner is not entitled for the grant of benefit of military service as there is nothing on record to show that petitioner is not getting the pension from the Indian Army.

Learned counsel for the respondents does not dispute that the minimum qualifying service for grant of pension from the Indian Army is 10 years, whereas the petitioner has only served for a period about five years in the Indian Army and therefore, the question of grant of pension by Indian Army does not arise and accordingly, the said objection as well cannot be taken into consideration for denying the benefit to the petitioner.

Keeping in view the above, the claim of the petitioner is allowed. Petitioner shall be granted the pensionary benefits by taking into consideration his service, which he had rendered from 10.03.1984 till he attained the age of superannuation on 30.09.2012.

Let the pensionary benefits of the petitioner be recalculated by the respondents under this order and the difference of the amount, for which the petitioner becomes entitled, be calculated within a period of two months from the date of receipt of certified copy of this order. Further, as the petitioner has been posed this litigation especially when the respondents themselves granted the benefit of military service to the petitioner while he was in service, he will also entitled for interest on the recalculated amount, which he will be released under this order. The amount which the petitioner will be released under this order will carry interest @9% per annum from the date the petitioner retired from service till the actual payment of the same.

Let the amount calculated under this order, which is to be done within a period two months from the date of this order, be paid to the petitioner within a period of one month of the calculation of the same.

Present writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

January 15, 2020
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes