

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

CWP 11011 of 2017 (O&M)

Date of Decision: November 17, 2021

Jai Pal Guleria and another ...Petitioners

Versus

Union of India, the Secretary, Ministry of Home, New Delhi and
others

... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Gaurav Chadda, Advocate
for the petitioners.

Mr. Rajiv Verma, Advocate
for respondents-UOI.

FATEH DEEP SINGH, J. (Oral)

Petitioners Jai Pal Guleria and Jagdish Meena who
were posted as head constables with Indo Tibetan Border
Police Force (in short, '**the ITBPF**') has come in this civil writ
petition under Articles 226 and 227 of Constitution of India
seeking writ in the nature of *certiorari* for quashing of orders
dated 18.01.2017 (Annexure P-9) passed by the Director

General, ITBPF-respondent No.3 whereby claim of pension and pensionary benefits of the petitioners was illegally and arbitrarily rejected and the petitioners through this invocation has sought the same.

Upon hearing Mr. Gaurav Chadda, Advocate for the petitioners and Mr. Rajiv Verma, Advocate for the respondents and perusal of records.

It is not in any manner displaced even in the written reply by respondents that petitioner No. 1 was enrolled on 12.09.1976 and petitioner No. 2 in the year 1986 with the respondents. It is during the discharge of their duties after putting in more than 25 and 15 years of service respectively both the petitioners were charge sheeted under Sections 43 and 41 of the Indo Tibetan Border Police Force Act, 1992 by concerned Commandant. In the departmental inquiry, after both the petitioners submitted plea of guilt their ranks were reduced from that of head constables to constable for one year and their

suspension was revoked vide order dated 21.09.2000. However, a *denovo* trial was ordered vide order dated 31.10.2000 and, thus, were found guilty and dismissed from service vide order dated 04.11.2000. It is not in any manner displaced that the petitioners, thereafter, filed a writ petition bearing No. 121 of 2001 in this Court which was allowed and the single Bench of this Court passed order dated 28.01.2013, operative part of which reads as under:-

“Taking them back in service at this stage, would not be conducive to the service as they have remained away from the disciplined Force for number of years. Accordingly, while setting-aside the proceedings, I am not inclined to allow the consequential benefits of reinstatement and other consequences that may follow on account of setting-aside of the proceedings. It would be appropriate to direct that both the petitioners be

deemed to have been discharged from the date they were dismissed from service and that seems to be the fair manner in dealing with the delinquents who have committed a serious misconduct. Incidentally, there was a strong suspicion against the petitioners for having committed an offence of rape, for which, they could not be tried due to lack of sufficient evidence. They, however, were charged for having entered the house of a lady but the proceedings are being set-aside on the ground that second trial is without jurisdiction.

The petition is accordingly allowed. The trial proceedings and punishment imposed on the petitioners are set-aside. However, the petitioners shall be deemed to have been discharged from service w.e.f. the date of their dismissal i.e.

04.11.2000. There shall, however, no order as to costs”.

The stand of the respondents-Union of India and others admitting the factum that order of dismissal from service of the petitioners has been converted to that of discharge w.e.f. 04.11.2000 and, therefore, claimed that under the Central Civil Services (Pension) Rules 1973 (in short, '**the Rules**') no pension is admissible in case of discharge and, thus, sought dismissal of the petition.

Appreciating the submissions, the single Bench view rendered in CWP No. 121 of 2001 vide orders dated 28.01.2013 has since then attained finality.

Rule 9 of the Rules is inapplicable to the case of the petitioners before this Court and clear and plain reading of Rule 9 of the Rules mandates that the powers vests in the President. The President reserves to himself the right of withholding of pension or gratuity or both either full or in part or withdrawing

the pension in full or in part for a specific period. Since the orders passed by the respondents upon judgement (Annexure P-1) has converted the order of dismissal passed by the respondents to that of discharge w.e.f. from the date of their dismissal, i.e. 04.11.2000 and, therefore, to the mind of this Court does not have any adverse impact on the amount of pension in terms of Rule 49 of these Rules and, thus, it is pure and simplicitor discharge from service of both the petitioners and, therefore, the pension and gratuity shall be calculated at the rate applicable to the case of the petitioners as per the length of service till the date of their discharge. The petitioners are certainly entitled to pension upon completion of qualifying service and even the period of suspension, if any, during that relevant period has to be calculated and will determine the amount of pension to the petitioners. The regulations of claim to pension shall be governed by Rule 5 of these Rules and it needs to be reiterated here that pension and other pensionary

benefits are by virtue of qualifying service rendered by a person in a service and cannot be at the whims and fancies of the employer until and unless an adverse finding has come about under the service rules. Pension is a constitutional right of a citizen and is consanguinous with right to property and which right cannot be denied without a well reasoned legal order by a competent authority which is not so before this Court. In the present case, since strictly speaking no adverse order has been passed against the petitioners and they have only been discharged from the date enumerated in judgement dated 28.01.2013 (Annexure P-1) and, therefore, the case of the petitioners is a fit one to be considered for the grant of the pension and the pensionary benefits in terms of the rules and regulations applicable to the service where the petitioners have served. The act of the respondents in denying them their legitimate right to pension is certainly highly uncalled for as there is nothing by way of grave misconduct during the

discharge of their official duties which could rob them of their pension and whatever has come about at the most tantamounts to simplicitor discharge.

In the light of what has been detailed and discussed above, the present petition stands allowed thereby quashing the impugned order dated 18.01.2017 (Annexure P-9) passed by the respondents denying the petitioners their right to pension consequent upon their discharge. The petitioners are entitled to entire pension commensurate to the length of service till their discharge rendered alongwith interest @ 9% per annum on the due pension and pensionary benefits from the date it became due till the amount is realized.

Disposed off.

November 17, 2021

amit rana

(FATEH DEEP SINGH)

JUDGE

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