

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

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**CWP No. 22896 of 2021
Date of decision : 11.11.2021**

S.S. Bola

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. R.P. Dangi, Advocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to enhance the pension of the petitioner by granting the benefit of additional 20% of basic pension w.e.f. 1.8.2021, being the 80th year of age; i.e. on completion of 79 years of age and commencement of 80th year of age on 15.8.2021, as per Rule 33(1) of the Haryana Civil Services (Pension) Rules, 2016 (in short 'Rules 2016').

The facts as given in the petition are; that the petitioner retired from Public Health Engineering Department, Haryana from the post of Engineer-in-Chief on 31.8.2000. He was getting his pension in the prescribed scale and as per his entitlement. Since the petitioner completed the age of 79 years and entered in the 80th years of age on 15.8.2021, therefore, he claimed enhanced pension at the rate of 20% of basic pension, in terms of Rule 33 (1) of the Rules 2016. The said claim has been declined by the department of the petitioner vide order dated 19.10.2021; and he has been advised to take up the matter with the Pension Disbursing Authority on completion of 80 years of age after 1.8.2022.

Notice of motion.

Mr. Harish Rathee, DAG, Haryana accepts notice on behalf of the respondents No.1 to 5 and Ms. Monita Mehta, Advocate has put in appearance on behalf of respondent No.6.

It is submitted by the counsel for the petitioner that the enhancement of pension from the age of 80 years is governed by Rule 33 of Rules 2016. The Rule prescribes that the enhancement is to be granted for the age bracket from 80 years to less than 85 years. The words 'from 80 years' would mean as from the start of the 80th year of age. Hence, as per these Rules, the petitioner is entitled to the enhancement of 20% in pension, from the date the petitioner completed 79 years of age and entered into 80th year of age. To buttress his argument, counsel for the petitioner has relied upon the judgment rendered by the Gauhati High Court in **WP (C) No. 4224 of 2016** titled as **Virendra Dutt Gyani v. Union of India and others** decided on 15.3.2018. Counsel has submitted that the Rule, which was interpreted in the said judgment is pari-materia to the Rule, which is applicable in the case of the petitioner. Counsel has further pointed out that the said judgment was taken to the Supreme Court by way of Special Leave to Appeal. However, even the SLP was dismissed by the Hon'ble Supreme Court vide order dated 8.7.2019. Hence, it is submitted that the interpretation of the phrase “from 80 years”; as given by the Gauhati High Court to mean as “from the commencement of the 80th year”, has attained finality. Hence, since the petitioner has already completed 79 years and has entered into 80th year of the age, therefore, he is also entitled to enhancement of the pension at the rate of 20% of his basic pension.

On the other hand, counsel for the respondent State has pointed out that the pension of the petitioner is governed by specific Rule, as contained in Rule 33 of the Haryana Civil Services (Pension) Rules, 2016. Referring to the Rule, counsel for the respondents/ State has submitted that the Rule is framed in a total unambiguous language, leaving no further scope for any other interpretation. The said Rule specifically prescribed that 20% of basic pension shall be available only on attaining the prescribed age, as is given in the table mentioned in the Rule. Accordingly, it is submitted by the counsel that as per the Rule, the petitioner would be entitled to enhanced pension, only from the date he attains the age of 80 years and not from the date of start of 80th year of his age. From that moment, the petitioner attains the age of 80 years; till the petitioner attains the age of 85 years, he would be entitled to the enhancement of 20% of basic pension under the Rule. The counsel for the petitioner submits that there is neither any Rule nor any rationale for extending the benefit on attaining the age of 79 years, which is available to the petitioner only on attaining the age of 80 years as per the Rules.

So far as the judgment of the Gauhati High Court, being relied upon by counsel for the petitioner is concerned, it is submitted by counsel for the State that the Rule 33, under which the petitioner is entitled to enhanced pension, is more than clear because of the words 'on attaining the age' used in the Rule; leaving no scope or contrary interpretation, whereas, the Rule considered by the Gauhati High Court, did not have the clear cut words for the benefit to be available to the pensioner on 'attaining the age of 80 years'. Hence, it was only this gap of language, prevalent in the Rules, involved in the case before the Gauhati High Court, which required interpretation by the

Gauhati High Court and by way of interpretation only this gap was clarified by the Gauhati High Court. However, the language of the two Rules makes it clear that the Rule applicable to the petitioner is not pari-materia to the Rules involved in the case before the Gauhati High Court.

Having considered the arguments of counsel for the parties and having perused the case file, this Court does not find substance in the argument raised by counsel for the petitioner. However, since the Rules relating to pension, as applicable to the petitioner, and as involved in the judgment of Gauhati High Court, have been referred to by counsel for the petitioner, therefore, it is necessary to have reference to both these Rules, which are reproduced herein below :-

High Court Judges (Salaries and Conditions of Service) Act, 1954.

17B. Additional quantum of pension or family pension - Every retired Judge or after his death, the family, as the case may be, shall be entitled to an additional quantum of pension or family pension in accordance with the following scale :-

Age of Pensioner or Family Pensioner	Additional quantum of pension or family pension
From eighty years to less than eighty five years	Twenty per cent of basic pension or family pension
From eighty five years to less than ninety years	Thirty per cent of basic pension or family pension
From ninety years to less than ninety five years	Forty per cent of basic pension or family pension
From ninety five years to less than hundred years	Fifty per cent of basic pension or family pension
From hundred years or more	Hundred per cent of basic pension or family pension

Haryana Civil Services (Pension) Rules, 2016.

Rule 33 – Additional pension on completion of prescribed age -

(1) On attaining the prescribed age, the pensioners shall be entitled to additional quantum of pension which shall be as under :-

Age of Pensioner	Additional quantum of pension
From 80 years to less than 85 years	20% of basic pension
From 85 years to less than 90 years	30% of basic pension
From 90 years to less than 95 years	40% of basic pension
From 95 years to less than 100 years	50% of basic pension
100 years or more	100% of basic pension

(2) The Additional quantum of pension shall be admissible from the first day of the month in which a pensioner completes prescribed age. For example, if a pensioner completes the age of 80 years in the month of August, 2016, he shall be entitled to additional pension with effect from 1st August, 2016. Those pensioners, whose date of birth is 1st August, shall also be entitled to additional pension with effect from 1st August, 2016 on attaining the age of 80 years and above.

(3) The Principal Accountant General (Accounts & Entitlement), Haryana shall ensure that the date of birth and the age of pensioner has invariably been indicated in the pension payment order to facilitate payment of additional pension by the pension disbursing authority as soon as it become due. The amount of additional pension shall be shown distinctly in pension payment order. For example, where pension on retirement is Rs.10,000/-per month, in pension payment order it shall be shown that on attaining the age of 80 years the Additional Pension shall be Rs.2,000/-per month in addition to basic pension of Rs.10,000/-.”

A bare perusal of the Rule, as applicable to the petitioner, shows that the enhanced component of the pension is prescribed to be paid only on 'attaining' the prescribed age, which is prescribed in the table given in the Rule itself. The Rule prescribed the age for the enhanced pension as “from 80 years to less then 85 years”. Hence, it is clear that the enhancement of pension under Rule 33 of the Haryana Civil Services (Pension) Rules, 2016 is to start only when a pensioner attained the age of 80 years. Therefore, from the age of 80

years till the day immediately preceding the day when the pensioner attains the age of 85 years, the pensioner is entitled to the enhancement to the extent of 20% of the basic pension. This Rule leaves no scope extending the applicability of enhanced pension from the start of the first day of the 80th year of the age. This interpretation is excluded by the express words used in the Rule 33; which prescribes that the enhancement shall be available only on the attaining the prescribed age. “Attaining the age of 80 years”, by any means cannot be interpreted as “starting the 80th year of the age”. A person does not attain the age of one year on the day he is born. He has to undergo the duration of one year to attain the age of one year. The word “age” itself signifies the time period as having already passed. So attaining age of one year would mean passing of one full year. It is obvious that a calendar year starts from first day of the calendar month of January and ends on the last day of the calendar month of December. If a person is born on 1st January, he would be completing age of one year only at 2400 hours of 31st December of the said year and not on start of the 00 hours of 1st January of the said year. It is only in this sense that the word attaining the age from 80 years to less than 85 years have been used in the Rule. It is obvious that the day has the meaning of start of the duration of the period from 00 hours to 2400 hours”, immediately before the succeeding day. Hence, on complete reading of the Rule, it is clear that a pensioner would be entitled to enhanced pension from 00 hours of the day next to the date when he completes his 80 years and this will continue till the moment preceding the moment when he completes 2400 hours on the date when he completes his 85th year of age. Hence, this Court does not find anything wrong in the interpretation given to the Rule by the respondents.

Although counsel for the petitioner has relied upon the judgment referred by the Gauhati High Court in **Virendra Dutt Gyani's case** (supra), however, on this aspect as well, this Court finds substance in the argument of counsel for the respondents/State that the Rule involved in that judgment is not exactly pari-materia to the Rule involved in case of the petitioner. The most relevant phrase “on attaining the prescribed age”, which is used specifically in Rule 33 of the Haryana Civil Services (Pension) Rules, 2016, was missing in the Rule involved in the judgment delivered by the Gauhati High Court. Because of this ambiguity, there would have been some scope of interpreting the Rule, in the way it has been interpreted, however, even that ambiguity is clarified in the Rules framed by the State of Haryana, wherein, it is more than clarified that it is only 'on attaining the prescribed age', which is given in the table as “from 80 years till less then 85 years” that the pensioner shall be entitled to enhanced pension. Hence, this Court does not find the reliance of the petitioner on the judgment of Gauhati High Court to be well placed. The said judgment is clearly distinguished because of its own language.

In view of the above, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

11.11.2021

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No