

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

CWP-24952-2014

Date of decision : May 24, 2022

Ujaljit Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Malkeet Singh, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the grievance which is being raised by the petitioner is that the petitioner is entitled for the grant of benefit of military service rendered during the First National Emergency declared from 26.10.1962 till 09.01.1968 whereas while granting the petitioner the pensionary benefits, the service rendered during the First National Emergency was not taken into account for computing the pensionary benefits, which grievance when later on raised by the petitioner has been declined, which action is under challenge in the present petition.

As per the facts mentioned in the petition, the petitioner joined the Indian Air Force on 18.12.1959 and while the petitioner was serving, the First National Emergency was declared on 16.10.1962 and the said emergency remained in force till 09.01.1968. The petitioner served during the said period and ultimately was discharged on 08.03.1970 after he completed his regular engagement. The petitioner after rendering 10 years and 97 days of service in the Indian Air Force, applied for a post of Excise

and Taxation Officer against a reserved vacancy against which, the petitioner was appointed on 31.08.1989. The petitioner served the Department in the State of Punjab till 30.06.1999 when he retired on attaining the age of superannuation. After the retirement, the petitioner raised a grievance that as per the Punjab Recruitment of Ex-Servicemen Rules, 1982, the petitioner was entitled for counting the service which the petitioner rendered during the First National Emergency towards the increment as well as towards the pensionary benefits which benefits have not been given to the petitioner. The petitioner already deposited the gratuity which the petitioner had received from the Indian Air Force so as to get the benefits of increment and pension by calculating the service rendered by the petitioner during the First National Emergency. The said benefits were declined by the respondents vide impugned order which is under challenge in the present petition.

After notice of motion, the respondents have filed the reply. In the reply, the respondents have stated that though the petitioner had served the Indian Air Force during the First National Emergency but the said period cannot be counted towards increment or the pension as the gap in joining the second service exceeds one year and on the ground that the petitioner did not join the Indian Air Force during the First National Emergency period, which is the requirement, therefore, the benefits of the said period i.e. 26.10.1962 to 09.01.1968 cannot be given to the petitioner towards the increment and pension after the petitioner retired from a civil post.

Learned counsel for the respondents further submits that the petitioner joined the civil services in the year 1988 but he did not raise up

the said issue till his retirement in the year 1999 and even the writ petition was filed in the year 2014 after 15 years of the retirement, the claim of the petitioner is belated and is liable to be rejected on the ground of delay itself.

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

With regard to the declining of the relief of pension by including the military services on the ground of delay it will be too harsh a proposition for a soldier, who served India at the time when it was needed. Though, it is a conceded position that the petitioner did not agitate his claim during his service period when he was working against a civil post from 1989 till 1999 or for a period of 15 years even after the retirement, the ultimate relief can be moulded to compensate for the said delay.

The law on this issue whether the claim for the pensionary benefits is a continuing wrong, which will give recurring cause every month and is not barred by limitation, has been answered by a co-ordinate Bench of this Court in RSA No.1906 of 1999, titled as ***“Ex. Constable Gurdev Singh vs Union of India & Ors.”***, decided on 25.07.2013. In the said case, this Court has held that the claim for pension even after 20 years, cannot be rejected on the ground of limitation. The said finding has been recorded keeping in view the settled principle of law as settled by Hon'ble Supreme Court of India in ***“Shiv dass vs Union of India and others”, 2007(2) SCT 72*** and ***“Union of India and others vs Tarsem Singh, 2008(4) SCT.***

Keeping in view the said principles of law, the claim relating to pension cannot be dismissed on the ground of limitation.

The question is, in case the claim of a pensioner cannot be

dismissed on the ground of limitation, then how is the equity to be balanced by the ultimate relief to be given. As per *Ex. Constable Gurdev Singh's* case (*supra*), in case, there is a delay in approaching by a litigant seeking pensionary benefits, the said delay can be compensated by way of not awarding 100% arrears in case, the said petitioner succeeds in getting the relief. The arrears can be restricted so that the pinch of payment of arrears for a long period is not felt by the respondents.

The prayer of the respondents for dismissing the petition outrightly on the ground of delay despite the fact that the same relates to the grant of pensionary benefits, is declined, keeping in view of the abovesaid settled principle of law.

Further, the Rule 8(a) of the rule (*ibid*), under which the petitioner is claiming the benefits of increment as well as the pension for the period when the petitioner served during the First National Emergency is reproduced hereinunder for ready reference:

“8-A, Increments and pension – Period of military service rendered during the First National Emergency from 26th October, 1962 to 9th January, 1968 shall count for increments and pension as under:-

*(i) **Increments** - The period spend by a person on military service (restricted to emergency period from 26th October, 1961 to 9th January, 1968) after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count from increments. Where no such minimum age is prescribed the minimum age shall be as laid down in Rules 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules Volume II. This concession shall however, be admissible only on first appointment.*

(ii) **Pension** - *The period of military service mentioned in clause shall count toward pension only in the case of appointments to permanent services of posts, subject to the following conditions:-*

(1) *The person concerned should not have earned a pension under military rules in respect of the military service in question.*

Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government.”

A bare perusal of the above Rule would show that an ex-service personnel who has rendered service during the First National Emergency is entitled for counting the said period towards the increment and pension while working on a civil post.

Further, the said question has already been considered by a co-ordinate Bench while passing order in CWP No.6214 of 2012, decided on 07.08.2013, titled as “***Gulzara Singh vs State of Punjab***”. The question of law raised in the said petition is the same as raised in the present petition wherein, a co-ordinate Bench after interpreting the Rule (*ibid*), especially Rule 8(a) held that while working on the civil post after being discharged from the military services, an ex-servicemen is entitled for computing the period of First National Emergency towards increments as well as the pensionary benefits.

Learned counsel for the respondents has not been able to rebut in any manner that the claim of the petitioner is not covered by ***Gulzara Singh***'s case (*supra*).

Keeping in view the above, the present petition is also disposed of in the same terms as ***Gulzara Singh***'s case (*supra*) by answering the question of law in favour of the petitioner that the petitioner is entitled for the grant of increment as well as computing the period rendered during the First National Emergency by the petitioner towards qualifying service for computing the pensionary benefits after the petitioner retired from a civil post.

The respondents are directed to recalculate the salary of the petitioner after granting benefit to the petitioner under Rule 8(a) of the Rules (*ibid*) for the grant of increment and also compute the period of First National Emergency for which the petitioner had served the nation in Indian Air Force towards qualifying service for computing the pensionary benefits.

The question which arises here is whether, the petitioner should be granted the arrears for the complete period or not, the same needs to be curtailed, keeping in view the delay in agitating the claim. In the present case, there is no dispute that the petitioner did not agitate his claim while in service. It is only after his retirement, petitioner started filing representations claiming benefits under Rule 8(a) of the Rules (*ibid*).

Further , the claim of the petitioner was declined by the respondents in the year 2010 and the writ petition was filed in the year 2014. That being so, it can be said that the petitioner filed the present petition after a delay but as the same relates to the grant of pensionary benefits, in the interest of justice, though the benefits of the petitioner be granted under Rule 8(a) of the Rules (*ibid*) in respect of increment as well as for the pensionary benefits but the arrears, for which the petitioner is found

entitled will be restricted for a period of three years and two months from the date of filing of the present writ petition.

The present petition is allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

May 24, 2022

sarita

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No