

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

CWP-36473-2019

Date of decision: 30.11.2022

Dr. PRAVEEN KUMAR BOORA

...Petitioner

VS

STATE OF HARYANA AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Brij Bhushan Kaushik, Advocate,
For the petitioner.

Mr. R.K.S.Brar, Additional A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to grant the benefit of Seniority, ACP scale, pay fixation to petitioner, being a former short service commission officer. Further, he seeks protection of the pay scale at the time of release from the Army, as has been granted to the similarly situated persons.

2. Facts as pleaded in the petition. Petitioner was granted Short Service Commission in the Indian Army. He joined on 01.06.2000 and was released from Army on 10.10.2006. Petitioner was serving in the Indian Army as Major, a Short Service Commission Officer at the time of release from the Army. He was appointed as Dental Surgeon at Community Health Centre, Dhanana (Bhiwani) in the Health Department of Haryana against Ex-serviceman category. Respondents No.1 and 2 have granted the petitioner benefits of additional increments in lieu of 6 years and 4 months' service as Short Service Commission Officer and

pensionary benefits, but has denied 6 years' benefit of Military Short Service Commission towards ACP, Seniority, Pay Fixation and Pay protection. Hence, the present writ petition.

3. In the return filed to the writ petition, strangely, none of the claims of the petitioner have been discussed on merits and on the contrary the averments contained therein are completely tangent. Petitioner's claim to pension is resisted on the ground that since appointment was made after introduction of New Pension Scheme, petitioner is to be governed by the same. It is not for this Court to adjudicate on the entitlement of pension, as has been threadbare resisted in the written statement and said controversy is left open as and when the occasion arises or the petitioner makes his claim *qua* the same.

4. Adverting to the claim in the petition, the same is with respect to seeking benefit of the past military service rendered by the petitioner in Short Service Commission so as to seek the consequential benefits of seniority, ACP scale, pay fixation as well as protection of the pay scale with the State of Haryana after having joined as Dental Surgeon in the Health Department.

5. I have heard learned counsel for the parties and gone through the case file.

6. I see no reason as to why the present claim of the petitioner be not accepted, for which the reasons are not far to seek in the light of the administrative order dated 10/24.10.2017 (Annexure P-1), which was passed by not less than Principal Secretary to Government of Haryana, Health Department, which clearly stated that:

“Governor of Haryana is pleased to grant the benefit of military service to Dr. Parveen Boora rendered by him during the period from 01.06.2000 to 10.10.2006 towards

advance increment and pension subject to the same conditions as issued in case of Dr. Rajesh Gera issued vide No.02/21/2010-1HBI dated 11.09.2012.

2. *This is issued with the concurrence of the Chief Secretary to Government Haryana, conveyed vide their U.O. NO.12/3/2010-4GSII dated 12.04.2017 and Finance Department U.O. No.2/35/2006-I Pension dated 04.08.2017.”*

7. *Apropos*, one would accept that despite Finance Secretary having accorded the necessary sanction, the petitioner was made to run from pillar to post as the Finance Department sat over the sanction already accorded by the Governor. Further, even when the Finance Department indeed passed an order contained at Annexure P-12 granting benefit of pay scale of military service, yet the same remained only on the papers as actual financial remittance was never made to the petitioner arising out of the same compelling him to knock the doors of this Court. For ready reference, sanction of the Finance Department reads, as below:

“Finance Department observes that Military Services rendered before joining Government Service counted for granting seniority/pay fixation shall also be counted as regular satisfactory service for the purpose of granting of ACP scale.

A.D.’s filed received herewith.”

8. As already noted, the stand of the respondents in the return has been rather on the tangent of the admissibility of the pension and not on the merits of the Administrative Instructions, *ibid* i.e. the one by the Secretary of the Health Department followed by the sanction of the Finance Department. Therefore, on that short ground alone, this Court would have allowed the claim of the petitioner.

9. In any case, for the benefit of the respondents, reference may be had to controversy in hand, which is no more *res integra*. Even otherwise on merits as in the light of Division Bench’s judgment dated

07.09.1995 rendered by this Court in CWP No.4902-1995, contained at Annexure P-7, wherein speaking for this Court R.K. Jain, J. (as he then was in this Court) observed as below:

2. On account of the external aggression by Chinese forces on the Indian Territory an emergency was imposed by the Government of India in 1962. In order to attract young men to join military service at that critical juncture the Central Government and the Governments of the States announced certain benefits to be given to those young men who join military service. Accordingly the Punjab Government framed rules under Article 309 of the Constitution of India known as the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter called the Punjab Rules). These rules were adopted by the State of Haryana also. Rule 4 of the said rules, as it stood originally In so far as relevant for our purposes reads as follows :-

"4. Increments, seniority and pension: Period of military service shall count for increments, seniority and pension as under.

(i) Increments: The period spent by a person on military service, after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count for 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) Seniority: The period of military service mentioned in clause (1) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service."

By a subsequent Notification dated November 5, 1976, the Governor of Haryana in exercise of its powers under Article 309 of the Constitution amended the Punjab Rules as applicable to Haryana by inserting a proviso to Rule 4 which reads as under :-

"Provided that a person who has been released from military service on compassionate grounds shall not be entitled to any concession under this rule."

Thus the persons who had been released from military service on compassionate grounds were singled out for denying benefits of Rule 4 reproduced above.

3. The petitioner along with others being aggrieved by the amendment made by notification dated November 5, 1976 by the Governor of Haryana, challenged the validity and the vires of the said amendment by way of Civil Writ Petition No. 16408-17 of 1984 filed before the apex court titled as Kalu Ram Sangwan and others v. State of Haryana and another, while placing reliance upon an earlier judgment rendered by

the apex court in Ex. Captain K.C. Arora and others v. State of Haryana and others, 1984(3) SCC 281 wherein the said amendment was held to be ultra vires of the Constitution and bad, accepted the petition and held that the petitioners therein were also entitled to the benefit of Rule 4 as it originally stood and the mere fact that they were released from military service on compassionate grounds cannot disentitle them as they satisfy the requirement of Rule 4 of the Punjab Rules as it originally stood. It was further held by their Lordships that the grounds on which they were released were not material and if once they were held ex- military servicemen, they were entitled to the benefit of the said rules. Accordingly, a writ in the nature of mandamus was issued directing the State of Haryana and the State Transport Commissioner, Haryana, to confer the benefits of ex-military/air force service to those petitioners within a period of six months from the date of that judgment which was rendered on 10.5.1995.”

10. The above view has been followed subsequently from time to time and holds the field till date.

11. As an upshot of the discussion, writ petition is allowed. Respondents are directed to give the due benefit of military service to the petitioner towards ACP, seniority, pay fixation and pay protection and to pay the arrears of salary within a period of 3 months from today along with interest @ 5 % per annum from the due date till payment.

12. Allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

November 30, 2022
vandana

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