

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

343

CWP-16277-1994

Date of decision: 06.01.2023

INDER SINGH

..Petitioner

Versus

THE SECRETARY, HOUSING AND URBAN  
DEVELOPMENT, PUNJAB ORS.

..Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Ms. Alka Chatrath, Advocate  
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

Mr. Naresh Prabhakar, Advocate  
for respondent No.2 and 3.

**ANIL KSHETARPAL, J(Oral)**

1. The petitioner prays for issuance of a suitable writ to direct the respondents to grant benefit of military service rendered by him during the National Emergency during the period from 26.10.1962 to 10.01.1968 and 03.12.1971 to 03.07.1977 for the purpose of calculating seniority and increments in view of the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter referred to as the '1965 Rules'). Some facts, in brief, are required to be noticed. The petitioner, after having worked in the Indian Air Force from 01.06.1961, was discharged from service on 31.05.1976 after completion of 15 years of service. Thereafter, he got his name registered with the employment exchange. He was selected as a Legal Assistant in the Department of Housing and Urban Development, Punjab. He joined, as such, on ad hoc basis on 12.05.1977, whereas, his services were regularized on 29.11.1979. The President of India proclaimed National

Emergency on 26.10.1962 which continued upto 10.01.1968. The petitioner claims the benefit of military service in accordance with 1965 Rules.

2. The relevant extract of the 1965 Rules is as under:-

*“2. Definition - For the purposes of these rules, the expression 'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a Warrant Officer) rendered by a person during the period of operation of the Proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service.*

*3. XXX XXX XXX*

*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.*

*(iii) Pension : - The period of military service mentioned in clause (i) shall count towards pension only in the case of appointments to permanent services or posts under the Government 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;*

*(2) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government;*

*(3) The period, if any, between the date of discharge from military service and the date of appointment to any service or post under*

*the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of Government".*

*XXX XXX XXX*

*7. That the Punjab Government again framed Rules called the 'Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services), Rules, 1968 which were notified on 17th June, 1968. For the convenience of this Hon 'ble Court Rule 5 of the same is reproduced as under :-*

*" Rule 5. (1) Seniority and pay of candidates who are appointed against the vacancies reserved under Rule-3 shall be determined on the assumption they joined the service or the post, as the case may be, under the State Govt. at the first opportunity they had after they joined the service or the post, as the case may be, under the State Government at the first opportunity they had after they joined the military service or training prior to the Commission.*

*(2) Seniority in terms of candidates who are appointed against the vacancies reserved under Rule-3 and allotted to a particular year shall be determined on the basis of their dates of birth, the candidates older in age be placed senior to the one younger in age.*

*Provided that in the case of candidates having the same date of birth seniority shall be determined according to merit list prepared by the recruiting authority on the basis of the result of the test or examination.*

*(3) All candidates appointed against the reserved vacancies under Rule-3 shall rank below the candidates appointed by direct recruitment in the year to which the former candidates are allotted."*

3. Though, the petitioner has been granted the benefit of counting his service towards seniority from 02.01.1977, however, he claims that he is entitled to the benefit of five years, two months and five days of service. The respondents dispute the petitioner's entitlement on the ground that the

petitioner became a law graduate on 31.12.1976. Hence, he cannot claim the benefit for a period prior thereof as he was not qualified at the relevant time.

4. The learned counsel representing the petitioner draws the attention of the Court to the judgment passed in **Upkar Singh Dhillon Vs. State of Punjab, CWP-482-1985, decided on 23.07.1996.** The attention of the Court has been drawn towards the following observations made by the Court:-

*“Under the 1965 Rules a deemed fiction has been introduced that a person whom the benefit of military service rendered during the emergency is given and for that matter a deemed date of appointment is assigned, he is deemed to have the requisite qualifications on the deemed date of appointment. If this is not done, the whole object of giving the benefit under 1965 Rules would become otiose. Consequently, I am of the view that the respondent-State was not right in rejecting the claim of the petitioners for benefit of military service rendered during the period of emergency on the ground, as stated above.”*

5. The learned counsel representing the respondent has failed to draw the attention of the Court to any judgment taking a contrary view.

6. The learned counsel representing the respondent No.2 and 3 contends that the writ petition suffers from delay and laches as the impugned order was passed on 06.09.1991, whereas, the writ petition has been filed on 24.10.1994.

7. On the other hand, the learned counsel representing the petitioner submits that the cause of action accrue in favour of the petitioner only when the order dated 06.09.1991 was served on the petitioner.

8. This writ petition is pending for the last 28 years. The petitioner can be denied the relief only if the Court records a positive finding that the writ petition suffers from delay and laches. In any case, strict rules of

