

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

232

CWP-21205-2018

Date of Decision: 06.07.2023

Name Chand

.... Petitioner

Versus

State of Punjab and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

Present: Mr. Dinesh Sharma, Advocate  
for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

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**SANJEEV PRAKASH SHARMA, J (ORAL)**

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 19.08.2010 (Annexure P-2) and the order dated 26.11.2014 (Annexure P-7) passed by respondent No.3, whereby the benefit of increments to the petitioner has been denied.

2. The brief facts of the case are that the petitioner has assailed the action of the respondents in denying the benefit of increment for having rendered military service during the second national emergency from 03.12.1971 to 25.03.1977.

3. Admittedly, the petitioner was in military service from 1964 to 1980 and he, therefore, becomes entitled to increment and pension for having rendered military service during the first national emergency period from 26.10.1962 to 09.01.1968 as well as for during the second national emergency from 03.12.1971 to 25.03.1977. The respondents have allowed

the petitioner to benefit of the first emergency period served by him and have released the increment as well as revised pension. However, the respondents have refused to grant the benefit of service rendered during second national emergency to the petitioner upon his retirement and have not released the increments on the ground that the time period of his discharge from military service and joining the State Department is more than 3 years. The order dated 26.11.2014 passed by the respondents is under challenge in the present writ petition.

4. Learned counsel for the petitioner submits that once the respondents recognized with the petitioner is entitled for the service rendered during the first emergency period, no discrimination can be drawn for having rendered service during the first emergency period and the second emergency period and increments must be given for the service rendered during the second emergency period. He further submits that so far as the question regarding having joined the department after a period of more than three years, is not relevant for the purpose of releasing the increment in terms of the Rules framed by the Punjab Government.

5. Per contra, learned counsel for the respondents submits that the rules deny release of pension to a person for the period rendered in the second national emergency if the concerned Government servant joins after discharge from military service after a period of one year. The same can be condoned upto three years and not more than later.

6. I have heard learned counsel for the parties at length and have considered the submissions.

7. The Punjab Recruitment of Ex-Servicemen Rules 1982 provide under Rule 8-A and Rule 8-B increments and pension for the military service rendered during the first national emergency and second national

emergency respectively. It would be apposite to quote the said rules under the heading of Rule 8-A and 8-B:-

*“8. **Pay**-The pay of Ex-servicemen appointed against a reserved vacancy shall be fixed in accordance with the provisions of Chapter VII of the Punjab Civil Services Rules, Volume II.*

***8-A, Increments and pension** – Period of military service rendered during the First National Emergency from 26<sup>th</sup> October, 1962 to 9<sup>th</sup> 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 26<sup>th</sup> October, 1962 to 9<sup>th</sup> January, 1968) 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) **Pension** – The period of military service mentioned in clause shall count towards 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.*

*(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 the Government.*

*This benefit shall be applicable to all those who were appointed in Government services before or after 11<sup>th</sup> February, 1982.*

**8-B Increments and pension** – *Period of military service rendered during the Second National Emergency from 3<sup>rd</sup> December, 1971 to 25<sup>th</sup> March, 1977, shall count for increments and pension as under:-*

**(a) Increments** – *The increment for the aforesaid service shall be paid to those persons only, who joined and rendered service during the aforementioned period. This benefit will, however, be given only at the time of making first appointment on regular basis on a civil post or service under the Government. However, these increments will be taken into account when the pay of a person is subsequently fixed on account of his promotion, selection, new recruitment or revision of pay scale or otherwise;*

**(b) Pension** – *The period of military service, referred to above, shall count towards pension only in case of an appointment to a permanent post under the Government, subject to the following conditions namely:-*

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

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

*(iii) The period, if any, between the date of discharge from military service and the date of appointed 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 the Government.”*

8. From the perusal of the aforesaid provisions, it is apparent that there is an embargo in granting pension under Rule 8-B(iii) if the Government servant had joined service after a period of more than three

years from the date of discharge from the military service, the said benefit is only with respect to pension, however, the same does not extend to the increments. The petitioner who has rendered service even after 25.03.1977, may not be entitled to pension as his date of joining in service is more than 3 years after the date of discharge from military service but he would be still entitled to the benefit of increments as per Rule 8-B(a). The said embargo mention under Rule 8-B(b) would not extend to the earlier provisions.

9. In view thereof, the stand taken by the respondents is not sustainable and the petitioner would be entitled to the benefit of increments under Rule 8-B(a). To that extent, the order dated 26.11.2014 is set aside.

10. Accordingly, the present petition is allowed. The petitioner would be entitled to the aforesaid increment. The calculation thereto shall be made by the respondents and pension be revised accordingly and arrears be released to the petitioner within a period of three months from today.

**(SANJEEV PRAKASH SHARMA)**  
**JUDGE**

**06.07.2023**

*D.Bansal*

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