

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

CWP-455-2018

Reserved on :01.04.2024

Date of Pronouncement: 04.04.2024

AVTAR SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. V.K. Shukla, Advocate and
Mr. Ashish Gupta, Advocate for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J.

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 26.10.2012 (Annexure P-4) whereby respondent has declined to count his military service rendered during 1st and 2nd National Emergency towards pension.

2. Mr. V.K. Shukla, Advocate, at the outset, submits that at present grievance of petitioner is confined to counting of military service rendered during 2nd National Emergency for the purpose of pension.

3. The petitioner served Indian Army as Sepoy during both National Emergencies sprawled from 26.10.1962 to 10.01.1968 and 03.12.1971 to 26.03.1977. He, after superannuation from Indian Army, joined Punjab Police as Constable w.e.f. 15.10.1988. The State of Punjab framed Punjab Government National Emergency (Concessions) Rules 1965. The State further framed Punjab Recruitment of Ex-Serviceman Rules, 1982 (for short '1982 Rules'). The 1982 Rules came to be amended by notification dated 08.06.2004. The said rules came to be

further amended by notification dated 15.10.2009 and 10.04.2012.

4. The petitioner claims that as per notification dated 15.10.2009, military service rendered during 2nd National Emergency is required to be counted towards pension, in case of an appointment to a permanent post under the State Government. He relies upon judgment dated 13.11.2014 passed by Division Bench of this Court in ***CWP No.17661 of 2013*** titled as '***Rajinder Singh Vs. State of Punjab and others***'.

Mr. V.K. Shukla, Advocate, submits that petitioner is not entitled to benefit of increment, however, his service is required to be counted for the purpose of pension. He cannot be denied said benefit on the sole ground that he had retired prior to introduction of Rule 8-B. The Rule 8-B was inserted w.e.f. 15.10.2009 and it is applicable to every person who had served during 2nd National Emergency.

5. Per contra, Mr. Aman Dhir, DAG, Punjab submits that notification dated 15.10.2009 was amended by notification 10.04.2012. The notification dated 10.04.2012 cleared the clouds created by notification dated 15.10.2009 to the extent that benefit of counting of military service rendered during 2nd National Emergency would be available to those employees who were in service on 01.12.2011 or are appointed thereafter. The petitioner retired from service of State Government on 31.08.2006, thus, he was not entitled to benefit of notification dated 15.10.2009 as amended by notification dated 10.04.2012.

6. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

7. The entire controversy centers around the scope and interpretation of Rule 8-B of Punjab Recruitment of Ex-Serviceman Rules, 1982. The said rule was introduced by notification dated 15.10.2009 and it was further amended by notification dated 10.04.2012. Rule 8-B as amended is reproduced as below:

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

*(a) Increments- The increments for the aforesaid service shall be paid to those persons only, who **(‘joined and’ omitted by notification dated 10.04.2012)** 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; and*

(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 Government; and

(iii) 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 as per orders of the Government.

**These benefits shall be available to all the persons who were appointed in Government Service against reserved vacancies and were in Service as on 1st December, 2011 or are appointed thereafter:*

Provided that these benefits shall be admissible for pay fixation on notional basis with effect from 1st January, 2012 and arrears on account of pay shall not be paid.

** Inserted by Notification dated 10.04.2012.”*

From the perusal of aforesaid Rule 8-B, it is evident that in the original rule, it was not cleared whether it would be applicable to employees in service as well as retired or it would be applicable to particular kind of employees. The notification dated 10.04.2012 cleared the shrouded mystery. The notification dated 10.04.2012 made it clear beyond the iota of doubt that benefits shall be available to those persons who were appointed in Government service against reserved vacancies and were in service as on 01.12.2011 or are appointed thereafter.

8. The petitioner concededly was not in service on 01.12.2011. He retired from service on 31.08.2006 i.e. much prior to introduction of Rule 8-B. The reliance placed by petitioner on judgment of Division Bench of this Court in ***Rajinder Singh (Supra)*** is misplaced. In the said case, the Division Bench has not adverted with para added by notification dated 10.04.2012 in Clause (b) of Rule 8-B. Notification dated

10.04.2012 inserted one para in Clause (b) after sub-clause (iii) of Rule 8-B. No doubt, it was provided in the notification dated 10.04.2012 that amended rules shall come into force w.e.f. 01.12.2011, however, the newly inserted para made it clear that these benefits shall be available to only those persons who were in service on 01.12.2011 or are appointed thereafter. The language of the notification is clear and from the reading of notification dated 10.04.2012, it is evident that State has restricted benefit of counting military service. It has been made applicable to employees who were in service on 01.12.2011.

9. The petitioner concededly retired in 2006 and Rule 8-B came to be inserted in 2009. The said rule was further amended by notification dated 10.04.2012. The amendment made it clear that benefit of counting of military service for pension would be available only to those employees who were in service prior to 01.12.2011 or are appointed thereafter. The petitioner was not in service on 01.12.2011, thus, he is not entitled to benefit, carved out by Rule 8-B of 1982 Rules of counting of military service for pension. The claim of the petitioner is unsustainable.

10. In the wake of above discussion and findings, this Court is of the considered opinion that present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

04.04.2024
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>