

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

Reserved on : 20.03.2024

Date of Decision : 09.04.2024

LPA No. 2016 of 2019 (O&M)

R. S. Dhull

...Appellant

Versus

The State of Haryana and another

...Respondents

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

Present: Mr. Harikesh Singh, Advocate, for the appellant.

Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.

SANJEEV PRAKASH SHARMA, J.

The appellant before this Court had preferred writ petition wherein he prayed to count the period from 29.04.1963 to 01.07.1968 rendered in military service as Emergency Commissioned Officer as qualifying service for grant of pension. Further he prayed to direct the respondents to count the paramilitary service from 31.10.1969 to 22.09.1974 rendered as a Class-1 Officer in General Reserve Engineer Force for calculating the proper pension. It was further prayed to count the training period of a Tehsildar post as State Civil Service from 26.09.1974 to 08.02.1978 in view of Haryana Revenue (Group-B) Service Rules, 1988 and Rule 22 of the Central Civil Service Pension Rules, 1972 and State Government instructions dated 15.10.1971. It was also prayed to quash the order dated 11.12.1978 by which period of military service from 29.04.1963 to 10.01.1968 was counted illegally towards seniority and denying the arrears of pay and the period of military service from 11.01.1968 to 01.07.1968 was not counted. It was also prayed that the respondents be directed to consider his

case for promotion to the cadre of IAS/ HCS against the reserved post under Punjab Civil Service (Executive) Rules, 1930 and Rules 4, 6 and 7 of IAS (Recruitment) Rules, 1954 and Appointments by Promotion Rules, 1955 after taking into account the entire military service.

2. Notices were issued in the writ petition and reply was filed. Whereafter learned Single Bench passed a detailed judgment on 30.11.2016 and allowed the writ petition as under:-

“As a result of foregoing discussion, the present writ petition is allowed. It is ordered as under:-

- (i) The service of the petitioner under GREF from 31.10.1969 to 22.9.1974 will be treated as qualifying service for the purpose of grant of pensionary benefits subject to the conditions laid down in the Government instructions. The gap between the service of the petitioner in the GREF and Tehsildar shall be excluded while computing the benefit of said service to be given to the petitioner.*
- (ii) The training period of the petitioner as Tehsildar from 26.9.1974 to 8.2.1978 is treated to be as service for all intents and purposes, including grant of retiral benefits. Accordingly, after granting the benefit of First National Emergency, the date of appointment of the petitioner as Tehsildar is required to be refixed and the consequential benefits are to follow. The rules, instructions and orders passed by the respondents to the contrary are hereby quashed.*

In the circumstances, after computing the said service, the pension and other pensionary benefits of the petitioner are required to be recalculated and refixed. It is further directed that the petitioner shall not be entitled to any arrears of salary and other service benefits etc. on

account of undue delay and latches in approaching this Court. However, he is entitled to arrears of pension and other retiral benefits. Interest @ 9% per annum on the arrears of pension and other retiral benefits, which becomes due to the petitioner, will commence from 38 months prior to the date of the filing of present petition till date of payment. Arrears of pension, retiral benefits and interest be released to petition (er) (sick) within three months from the date of receipt of a certified copy of the judgment.”

However, the appellant being not satisfied, moved review application before the learned Single Bench, which was dismissed on 13.08.2019 holding that review case cannot be re-opened to grant additional relief. He, thereafter, filed the present LPA as learned Single Bench disallowed the benefit of service rendered by the appellant from 11.01.1968 to 01.07.1968.

3. Learned counsel for the appellant submits that the definition of military service as defined in Rule 2 of the Punjab National Emergency (Concession) Rules, 1965 was considered in the judgment of **Ex.-Captain K. C. Arora and another vs State of Haryana and others** AIR 1987 SC 1858 and the said definition was quashed. It is submitted that in view thereof the military service as defined earlier to mean service rendered during the period of operation and proclamation of emergency i.e. upto 10.01.1968 was unjustified and the entire military service rendered by the appellant upto 01.07.1968 should have been counted.

4. We have considered the submissions and find that in **K. C. Arora's** case (supra), Hon'ble the Supreme Court held as under:-

“9. The Government of Punjab prior to the formation of Haryana made statutory rules under Article 309 of the Constitution which are called 'The Punjab National Emergency

(Concession) Rules, 1965. The relevant rules 2, 3, 4, and 5 of these rules are as under :

"2. Definition :- For the purpose 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 of India 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. Maximum age-limit and minimum qualification:

i) The maximum age-limit prescribed for appointment to any service or post shall be relaxed in favour of a person who has rendered military service to the extent of his military service, provided he produces a certificate from the competent authority that he had rendered continuous military service for a period of not less than six months and was discharged because of demobilisation or reduction not more than three years prior to the date of his registration at an employment exchange or the date of his application for employment under the Government.

ii) A person who has become disabled while in military service shall also be entitled to exclude from his age the period from the date he was disabled up to the date of his application for appointment to any service or post under the Government, or till the end of the present emergency, whichever is shorter.

iii) In case a person who has rendered military service does not possess the minimum qualification prescribed for any service or post, he shall be deemed to possess these qualifications if the appointing authority certifies that such a person has acquired by experience or otherwise qualification equivalent to those prescribed for that service or post.

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 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.

5. Seniority, promotion, increment, pension and leave of Government employees:- The period spent on military service by a Government employee shall count for seniority promotion, increment and pension in the service or post held by him immediately before his joining military service. A permanent Government employee who renders military service, shall earn leave during such service according to the leave rules applicable to him immediately before his joining military service. A temporary Government employees shall during military service, be governed by the military rules in all respects. The employee concerned shall be entitled to proforma promotion in his parent department under the 'next below' rule and also to seniority in higher posts to which he would otherwise have been entitled if he had not joined military service."

5. The definition of military service having been set aside, the entire service of the appellant upto to the period he was released on 01.07.1968 was required to be counted. The respondents have although counted the period from 29.04.1963 to 10.01.1968 in view of the law down in **K. C. Arora's** case (supra), the service beyond 10.01.1968 upto 01.07.1968 would, therefore, be

counted as military service for the purpose of grant of benefit under Rule 4 to the said extent and the order passed by the learned Single Bench deserves to be modified and the relief required to be given to him.

6. The second grievance raised by the appellant is regarding grant of his benefits. It is submitted that the learned Single Bench has held the appellant to be entitled to pension and pensionary benefits after recalculation and re-fixation of salary. Further directed that he shall not be entitled for arrears of salary and other service benefits etc. on account of undue delay and latches in approaching this Court. It was further directed that the appellant would be entitled to arrears of pension and other retiral benefits along with interest @ 9% per annum which becomes due to him commencing from 38 months prior to the date of filing the writ petition till the date of payment. Arrears of pension, retiral benefits and interest were also directed to be relased for the said period of 38 months alone.

7. Learned counsel for the appellant submits that there was no delay on the part of the appellant as he has sought quashing of the order whereby period of service was counted from 29.04.1963 to 10.01.1968 towards seniority and denying the arrears of pay and military service from 11.01.1968 to 01.07.1968 had not been counted. He further submits that the appellant is a retired officer and had earlier also preferred writ petition before this Court. The matter travelled upto Hon'ble the Supreme Court in **Ex. Captain R. S. Dhull vs State of Haryana** 1998 (4) SCC 379. He submits that the appellant was always aware of his rights and had been pursuing the case although upto Hon'ble the Supreme Court. It is submitted that the issue of pension itself was a subject matter of adjudication before Hon'ble the Supreme Court. The

learned Single Bench has denied wrongfully the actual benefits, which were payable to him.

8. We have considered the submissions of the appellant as well as of the respondents. We noticed that Hon'ble the Supreme Court in the earlier round of litigation (*supra*) has observed as under:-

9. *We have heard learned Counsel for the parties on the main grievance of the appellant i.e. that his name was wrongly excluded from consideration for appointment to the Haryana Civil Service for the years 1980, 1982 and 1983. We have examined the record also. The appellant had only a right to be considered and we agree both with the learned Single Judge and the Division Bench of the High Court that his case was properly considered ignoring the expunged adverse entries made in his Annual Confidential Reports by a High Powered Committee but the appellant was not found suitable by that Committee to be recommended to the Commission. It is, therefore, futile to contend that there was any lack of consideration of his case or that the consideration of his case was based on any irrelevant or inadmissible grounds. The record reveals that his case was considered alongwith the Service record of the other eligible candidates who had been brought on the select list and we are not persuaded to hold that the consideration of his case suffered from any infirmity. The plea that the High Powered Committee was influenced by the adverse entries is not correct and deserves a notice only to be rejected. We, therefore, do not find any reason to interfere with the orders of the learned Single Judge and the Division Bench in that regard. However, there is one other aspect of the matter which requires our consideration.*

10. *Mr. Raju Ramachandran, learned senior advocate submitted that in spite of the orders of this Court dated 15.10.1997 (*supra*) all the retiral benefits have not so far been paid to the appellant. He submitted that while provisional pension has been fixed, but other benefits like G.P. Fund dues, Gratuity etc. have not so far been paid to him. He rightly argued that the respondents were not justified to Withhold the G.P. Fund and the Gratuity more particularly in view of the directions given by us on 15.10.1997. We, therefore, direct that while the case of fixation of proper pension of the appellant shall be decided by the respondents within three months from the date of this order, the G.P. Fund, Gratuity and other retiral benefits (which remain unpaid) shall also be paid to the appellant within the aforesaid period of three months. The appellant shall also be entitled to interest at the rate of 12% per annum on the withheld G.P. Fund and Gratuity etc. from the date the same became payable to him on his attaining the age of superannuation till the date the payment is made to him."*

9. Learned counsel for the respondents has relied upon the judgment in **M. R. Gupta vs Union of India and others** 1995 (5) SCC 628 to submit that only arrears can be released for a fixed period.

10. We have considered the submissions. The appellant had been denied his pension and he took up the matter before this Court and Hon'ble the Supreme Court where the issue was finally settled in his favour. He has been continuously adjudicating his rights and, therefore, it cannot be said that there were laches on his part.

11. In **M.R.Gupta** (supra), the Central Administrative Tribunal had denied the benefit of pay fixation to the petitioner on the ground of approaching the Tribunal belatedly. Since we have reached to the conclusion that there was no deliberate delay on the part of the appellant, the judgment of **M.R.Gupta** (supra) will have no application to the facts of the present case. Moreover, it is a continuous cause and the appellant has been subjected to continuous wrong as the period of his service has been denied as qualifying period for the purpose of assessing his final pension.

12. This Court is of the further view that the order passed by the learned Single Bench requires to be modified and the directions to pay arrears for 38 months prior to the date of filing of the writ petition is found to be without any basis and, therefore, is set aside. The appellant would be entitled to all the consequential benefits from the date these were due.

13. In view of the above, the appeal is allowed to the aforesaid extent. It is directed that in terms of the order passed by the learned Single Bench the appellant would be entitled to fixation of his revised pension by counting the period of service upto July 1968 and further he would also be

entitled to actual arrears and interest thereon @ 9% per annum upto the date of payment.

- 14.The appeal is accordingly allowed in the aforesaid terms.
- 15.All pending applications shall stand disposed of.
- 16.No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

09.04.2024
VS

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasonedYes/No

Whether reportableYes/No