

(2010) 01 P&H CK 0220
In the Punjab And Haryana At Chandigarh

Banarsi Dass Sharma

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Citation : (2010) 159 PLR 220

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The writ petition challenges the rejection of a plea by the petitioner for counting his Military Service for increment and seniority, which by the impugned order was denied to the petitioner on the ground that the petitioner had not the requisite qualification for the post of Auditor after his discharge from the Indian Navy.

2. The relevant provisions for counting of Military Service of persons, who had served the Indian Armed Forces during the Emergency, obtain through the Punjab Government National Emergency Concession Rules, 1965. It 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.

(ii) Seniority: The period of military mentioned in Clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.

Provided that a person who availed of concession under Rule (3) shall not be entitled to the concession under this clause.

(iii) Pension: The period of military service mentioned in Clause (i) shall count towards pension (in case of first or any subsequent appointment to any service or post) 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 authority shall have to be refunded to 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;

3. Rule 4 sets out the conditions when the Military Service could be reckoned for increments, seniority and pension. As regards the claim for increment, the only requirement is that the period spent on the Military Service after attaining the minimum age for appointment to any service or post to which he is appointed should count for increments. It is not the contention here that the petitioner did not have the requisite age nor was any relaxation sought for his appointment to the post as an Auditor. As regards the seniority, the requirement again is that a person, who has availed of a concession as regards the minimum age limit or the minimum qualification shall not again seek for any concession under this clause for seniority. This is not again a case where any concession had been previously obtained either for minimum age or the minimum qualification as regards pension. All that is required is that a person should not have earned a pension under Military Rules or bonus or gratuity in order to claim pension and to count the Military Service for the purpose of computation of pension. The respondent cannot deny to the petitioner the period of Military Service for increments, seniority or pension other than for the exceptions mentioned under the relevant Rule 4 itself and the rejection of the claim on the ground that the petitioner had not the requisite qualification for the appointment of an Auditor during his service in the Indian Navy is without reference to the relevant Rule. If the petitioner had the qualification for the post at the time of induction into service of the respondent, it is irrelevant that the petitioner did not have the qualification for the post of Auditor during the Military Service itself. The qualification would be relevant only for entry into the service of the respondent and the Rules are invoked only for the purpose of counting the Military Service and the Rules do not require that a person claiming such benefit should have had the qualification before his entry into the State service and during the time when he was in Military Service. The rejection of the plea is wholly in conflict with the relevant rules and the order dated 03.09.1992 is accordingly quashed.

4. The petitioner is entitled to the increment, seniority and pension by the period spent during the Military Service also. I am informed that the petitioner has since retired after the filing of the writ petition and the notional promotion and the increments shall be reworked and all the monetary benefits shall be made available including the pensionary benefits within a period of 12 weeks from the date of receipt of the order. The accrued monetary benefits shall be paid with simple interest @6% from the respective dates when they accrued.

5. The writ petition is allowed with costs assessed at Rs. 5,000/-.