
(1990) 04 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 544 of 1988

Brij Pal Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 10-04-1990

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 10(1)
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 1(3), 2, 4, 5, 6
Constitution of India, 1950 — Article 309, 311, 352
Punjab Government National Emergency (Concession) Rules, 1965 — Rule 3(2), 4, 5

Citation : (1991) 2 ILR (P&H) 173

Hon'ble Judges : J.V. Gupta, Acting C.J.; M.S. Liberhan, J

Bench : Division Bench

Advocate : G.C. Garg and A.C. Jain, for the Appellant; M.L. Sarin, Addl. A.G., Jai Shree Thakur and G.C. Gupta, for the Respondent

Final Decision : Allowed

Judgement

M.S. Liberhan, J.—This judgment of ours will dispose of Letters Patent Appeals Nos. 544 and 1372, of 1988 arising out of an order, dated May 31, 1988, granting the benefit of service rendered by Sukhdev Singh Gill, Sectional Officer during the period of External Emergency for the purpose of his seniority, salary and all consequential benefits.

2. Facts that emerged from the Writ Petition, Written Statement, other record produced and not controverted in the course of arguments, are that Sukhdev Singh Gill joined as a Sectional Officer, Municipal Committee, Ludhiana on September 7, 1973, after having been relieved from the post of Superintendent in General Reserve Engineering Force (hereinafter referred to as GREF) which he had joined on November 8, 1966, and from where he was relieved on November 24, 1972. Brij Pal Singh joined as Sectional Officer, Municipal Committee, Ludhiana, on August 25, 1973. The Municipal Services were provincialised somewhere in the year 1975 and were governed by the Municipal Services

(Conditions and Service) Rules, 1975. Some time later, the Municipal Committee was converted into & Corporation under the Punjab Municipal Corporation Act, 1976 and the Petitioner's services were governed by the Punjab Municipal Corporation (Service Recruitment and Conditions of Service) Rules, 1978. None of these rules granted any benefit of military service during the Emergency. Sukhdev Singh Gill was treated as junior to Brij Pal Singh. Sometime in 1985, Sukhdev Singh Gill made a demand on the Respondents putting forth a charter of claim for the benefit of military service in terms of the Punjab Government National Emergency (Concession) Rules, 1965. It was averred that the GREF was an integral part of the Indian Army. It was so observed in *R. Viswan and Others Vs. Union of India (UOI) and Others*, . Resultantly, he was entitled for the benefit of service rendered in GREF for the purposes of seniority, increments and other consequential benefits like pensionary benefits etc. etc. Arrears of pay and consequential reliefs were sought. The Respondents having declined the necessary reliefs, Sukhdev Singh Gill preferred the Writ Petition in which the learned Single Judge held that GREF is an integral part of the Indian Army and is a part of the Armed Forces. Thus, it was observed that the Petitioner was the member of the Armed Forces and he having rendered service during the period of External Emergency, would be entitled to the benefit provided by the Punjab Government National Emergency (Concession) Rules, 1965 hereinafter referred to as 1965 Rules).

3. The learned Counsel for the Appellant urged that Sukhdev Singh Gill was not entitled to the benefit under 1965 Rules inasmuch as he was never a member of the Armed Forces. The observations of the learned Single Judge that he was a member of the Armed Forces, cannot be sustained.

4. It was further urged that the Writ Petition was liable to be dismissed on the ground of laches. The precedent relied is not relevant to the facts of the case and the observations have been made keeping in view the peculiar facts and circumstances of the said case and has no relevance to the facts and circumstances of this case.

5. The learned Counsel referred to the provisions of 1965 Rules and particularly referred to Rule 3(2), 4 and 5 of the said Rules. It was urged that the said concession was available to the Government Servants only and Sukhdev Singh Gill was never a Government employee. The benefit of the said Rules has never been extended to the class of employees to which he belonged.

6. The learned Counsel relied upon *S. Arjan Singh v. The State of Punjab and Ors.* 1960 P.L.R. 745, in order to support his contention that Sukhdev Singh Gill was not a Government employee being a Municipal employee. There is no dispute with the proposition of law laid down in the judgment cited to the effect that provisions of Article 311 of the Constitution of India are not applicable to the employees of the Municipal Committee. It was observed, while considering the words "civil post under a State" as used in Article 311 of the Constitution of India, that the said expression does not include the post held by persons in the

service of Municipal Committee or any local authority. Almost on the *pari materia* reasoning it was observed in *Jagmohan Lal Bajpai v. State of M.P.* and Ors. 1977 (1) S.L.R. 746, that although a State Municipal Service is required to be constituted by the State and that the State has control over the employees in the service so constituted, but the employees of the Municipal Committee cannot be equated with the civil servants of a State, and that Service cannot be equated with a service "in connection with the affairs of the Union or of any State" as contemplated under Articles 309 of the Constitution, it still remains a Municipal Service for staffing the Municipal Councils.

7. There is no dispute that in *R. Viswan and other's* case (*supra*), it was observed after recording the history, composition, administration, organisation and the roll of GREF that it is an integral part of the Armed Forces and the members of GREF can legitimately claim to be the members of the Armed Forces for the purpose of Article 33. This was so considered particularly in view of the Notification making Section 10(1) of the Armed Forces Act, applicable. It was observed that for the purpose of Article 33 keeping in view the character of GREF, its organisational set up, its functions, the role it is called upon to play in relation to the Armed Forces and the depth and intimacy of its connection and the extent of its integration with the Armed Forces and if judged by this criterion, they are found to be members of the Armed Forces, the mere fact that they are non-combatant civilians governed by the Central Civil Services (Classification, Control and Appeal) Rules 1965, cannot make any difference. There is no quarrel with the proposition of law laid down in the judgment. The judgment cited was given on its own facts and by reasoning of the deductions made in the judgment, the provisions of 1965 Rules cannot be made applicable to *Sukhdev Singh Gill*.

8. The learned Counsel for the Appellant argued that in the 1965 Rules granting certain benefits and concessions to the Government employees relaxation was provided for appointment, increment, promotion etc. to the extent of service rendered in military. The reference was made to Rules 2, 4, 5, 6 and 7. Be that as it may, without determining the question whether the rules are applicable to the facts of the present case or not, it would be expedient to note that 1965 Rules provided that they shall be applicable to all classes of services and posts in connection with the affairs of the State of Punjab. The provisions relating to the applicability of Rules provided by Rule 1(3) runs as under:

They shall apply to all classes of services and posts in connection with the affairs of the State of Punjab except Medical and Health services.

9. "Military service" has been defined in Rule 2 to mean 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.

10. We are of the considered view that the Punjab Government National Emergency (Concession) Rules, 1965 provide a specific type of service rendered by providing a deeming definition of a military service which clearly provides that only that service shall be deemed to be military service which is undergone while being enrolled or commissioned in any of the three wings of the Indian Armed Forces including the service as a warrant officer and, it is only the service rendered during the period of Proclamation of Emergency made by the President on October 26, 1962 which will be considered to be military service. In the alternative, any such other service which may be declared to be military service for the purpose of those rules shall be deemed to be a military service. No other service can be considered to be a military service. GREF may be an integral part of the Army but undisputably it cannot be said that Sukhdev Singh Gill was either enrolled or commissioned in any of the three wings of the Indian Armed Forces or he served as a warrant officer. On a bare reading of the provisions, no other interpretation can be put howsoever hard it may appear to be. A service for specific reasons may be treated as an integral part of the Armed Forces but on that count alone it cannot be treated to be a service in any of the three wings of the Indian Armed Forces. There is no dispute that the service rendered in the GREF has never been notified or declared to be a military service for the purpose of 1965 Rules. Since it was never declared to be a military service, the Petitioner was not entitled to any benefit or concession granted by the 1965 Rules.

11. In view of the reasons stated above, the finding of the learned Single Judge to the effect that Sukhdev Singh Gill was entitled to the benefit of service rendered by him in the GREF and that the service is to be treated as a military service cannot be sustained. The benefits and concessions granted by the Punjab Government National Emergency (Concession) Rules, 1965 cannot be extended to him.

12. Instructions issued, in view of the pronouncement of the Supreme Court to the effect that service of GREF should be treated integral part of the Armed Forces for the purposes of Article 33 shall not convert the services as military service as defined by the Emergency (Concession) Rules.

13. For the reasons recorded above, the appeal is allowed, the impugned judgment of the learned Single Judge is set aside and the Writ Petition is dismissed with no order as to costs.