

(2018) 01 P&H CK 0173

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16132 Of 2011

Dharam Pal

APPELLANT

Vs

Union Of India And Another

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 2(f), 19
Punjab Civil Services Rules, Vol.II — Rule 4.3, 4.3(a), 4.6A

Citation : (2018) 1 SCT 796

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Neeru Bansal, Vipul Aggarwal, R.K. Doon

Judgement

Amol Rattan Singh, J

1. The petitioner, who is an Ex-serviceman, had joined the Indian Navy on 10.09.1971 with the designation of 'Boy', and eventually upon completion of service was released as a Petty Officer (Electrical) on 31.12.1983, as per the certificate Annexure P-1. He thereafter joined as an Assistant Electrician-cum-Helper on 30.10.1989 in the Haryana Civil Secretariat, on an ad hoc basis in the pay-scale of Rs.775-12-955-EB-14-1025. (Nothing is stated as to when he was given a regular appointment thereafter).

The appointment letter issued to him in civil service is also annexed as Annexure P-2. He is now stated to be working as an Electrician in the pay-scale of Rs.5200-20200.

2. By this petition, he is seeking quashing of the letter Annexure P-8, dated 12.08.2011, communicated to him from the office of the Chief Secretary to the Government of Haryana, refusing to grant him the benefit of pay fixation in terms of the letter of the Government of India dated 22.01.1991 (Annexure P-3), on the ground that the said instructions have not been adopted by the State Government.

He further seeks a writ of mandamus for grant of an advance increment on his initial pay, equal to the number of years served by him in the Armed Forces, in terms of the aforesaid letter.

3. As per the petitioner, a decision was taken vide the aforesaid letter, that ex-Servicemen who are similarly situated can opt to combine their service for pension under Rule 19 of the CCS (Pension) Rules, 1972, by surrendering their pensionary benefits; in respect of which earlier also a letter is stated to have been issued on 11.04.1963 by the Deputy Secretary to the Government of India, Ministry of Defence, (to all Ministries in the Government of India), stating therein that the pay of ex-combatant Clerks who retired/ were released from service in the Armed Forces, on re-employment as Lower Division Clerks/Junior Clerks on civil posts, would be entitled to count their Military service as equivalent service rendered as such Lower Division Clerks/Junior Clerks in civil departments, irrespective of the pay they were drawing from the Armed Forces.

This was to be done by fixing their initial pay in civil service at the stage where it would have become due to them on completion of equal number of years as Clerks (in civil service).

As per the petitioner, that letter was accepted by the Government of Haryana, with an intimation sent by the Chief Secretary to all the offices of the State, vide a letter dated May 20, 1974. A copy of the said letter, shown to be reproducing the letter dated 11.04.1963, is annexed as Annexure P-4 with the petition.

It is further contended that on 27.08.1998 the Government of Haryana again issued a letter with regard to fixation of pay of ex-combatant Clerks released from the service in the Armed Forces, upon their re-employment as Lower Division Clerks/Junior Clerks on civil posts; and eventually this Court, vide a judgment passed in the case of one Krishan Thakran v. State of Haryana and others (CWP no.11351 of 1995, decided on 18.12.1995), directed the State Government to grant the benefit of the letter of 1963 to all those who joined the Haryana Government as Clerks after 20.05.1974 (the State Government having adopted the Central Government letter on that date).

The letter dated 27.08.1998, giving reference to Krishan Thakrans' case, has also been annexed as Annexure P-5 with the petition, with a subsequent letter dated 16.02.1999, describing the method of re-fixation of pay, having been annexed as Annexure P-6.

4. The petitioners' claim therefore is that he being an ex-Serviceman, he should be granted the same benefit as has been granted to ex-combatant Clerks and therefore, for equation of his Military service also, he sent a notice on 17.06.2011 to the 2nd respondent, i.e. the Chief Secretary to the Government of Haryana, a copy of which has been annexed as Annexure P-7.

It is in fact, in response to the aforesaid notice that the impugned communication (Annexure P-8) has been sent to the petitioner, rejecting his

claim.

5. It is further contended that simply because the petitioner is not an ex-combatant Clerk, he cannot be denied the benefit given to that category, as all personnel released from Military service constitute one class, as per the ratio of the judgment of this Court in *Raj Pal Sharma v. State of Haryana and others*, 1985 (3) SLR 573.

He also relies upon a provision of the Ex-Servicemen (Re-employment in Central Civil Service and Posts) Rules, 1979, on the ground that an Ex-Serviceman includes a combatant and a non-combatant both, as per Rule 2(f) thereof.

On the aforesaid grounds, the petitioner claims that he is being discriminated against qua the same benefit granted to the ex-combatant Clerks.

6. In the written statement filed on behalf of the Chief Secretary, (respondent no.2), it has been stated that even as per the letter dated March 2, 1974 (Annexure R-1 with the reply), it had been decided that the benefit of the 1963 instructions would be granted to ex-combatant Clerks released from the Armed Forces, whereas the petitioner was appointed to a technical post, in the Haryana Government, i.e. Assistant Electrician-cum-Helper, and not in the clerical cadre, with him also having been promoted on 09.08.1994 to the post of an Electrician (in civil service).

7. It has been reiterated in the reply, as has been stated in the impugned letter (Annexure P-8), that the instructions dated 22.01.1991, otherwise applicable to Central Government employees, have not been adopted by the Haryana Government, and further, the petitioner is also not covered by the instructions dated 27.08.1998 and 16.02.1999 either, they too being applicable only to those who have joined in the clerical cadre (being ex-combatant Clerks in the Armed Forces earlier).

It is further clarified that in fact the aforesaid letters of 1998 and 1999 were not issued on the basis of the letter dated 22.01.1991 issued by the Government of India.

8. The reply filed on behalf of the 1st respondent, i.e. the Union of India in the Ministry of Defence, by Cmde. Ajay Saxena of the Directorate of Ex-Servicemen's Affairs, firstly admits to the fact that the petitioner was indeed employed in the Indian Navy in the capacities stated by him in the petition, and further, that as per the aforesaid Rules of 1979, he is within the category of Ex-Servicemen, with all instructions and rules pertaining to that category of persons issued by the Government of India applicable to him. It has also been stated that the Haryana Government, however, has not sought any clarification from the Indian Navy with regard to the issue of pay fixation of the petitioner.

9. The aforesaid pleadings being as above, thereafter the petitioner also placed on record by way of an application, a policy of the Union of India dated 07.01.2002, the subject of which is counting of the service of employees of the

State Government on their appointment in an autonomous body (statutory body) under the Haryana Government.

He has also placed on record by way of another application, a letter dated August 22, 1988, by which, subject to certain conditions, the previous service of employees of the Central Government, Central Autonomous Bodies, upon absorption in the State Government/State Autonomous Bodies, is to count for pension.

10. Thereafter, upon a query made by this Court, the State Government has also placed on record the relevant rules governing the counting of Military service towards civil pension. The said Rule, 4.3 of the Punjab Civil Services Rules, Vol.II (as applicable to the State of Haryana), reads as follows:-

"4.3(a) [Service rendered by an employee belonging to one of the classes mentioned in the Schedule below after attaining the age of 18 years, which is pensionable under military rules, but which terminates before a pension has been earned in respect of it, may at the discretion of Government, be allowed to count, when followed by service qualifying for pension under civil rules, as part of such service: Provided that any bonus or gratuity received in lieu of pension on, or since, discharge from Military service, shall be refunded in such number of monthly instalments, not normally exceeding 36 and beginning from such date, as in each case, the Government may decide. Service so allowed to count shall, however, be restricted to service, within or outside the employees unit or department, in India or elsewhere, which has been paid from Indian revenues or for which a pensionary contribution has been received by Indian revenue.

(b) Service pensionable under military rules which does not terminate before a pension has been earned in respect of it shall not be allowed to count, for pension under civil rules without the sanction of the competent authority.

Note 1.? An officer, ex-soldier, ex-sailor or ex-airman will not be brought under the operation of this rule, as a matter of course. Each case will be decided on its merits, e.g., there may be cases in which it may be open to a claimant for pension to add military service during the Great War to former non-pensionable service in the Army in order to claim the benefit of a military pension. In such cases it may be to the advantage of the claimant that he should not be brought under the operation of this rule. The bearing of paragraph 574 of the Pay and Allowances Regulations of the Army in India, Part II, on the position of soldiers of the Indian Army who re-entered during the Great War, deserves consideration in this connection.

Note 2.? To be eligible for the concession in this rule, the individual concerned should take his discharge from the Army, Navy or Air Force within 12 months of the date of his confirmation in the post pensionable under civil rules. This limit will be relaxed by competent authority only in special cases.

Note 3.? Employees in the Military Police have the option of counting service

under any other rules in these Regulations which would give them a similar or more liberal concession.

Note 4.? When an order is passed under this rule allowing previous military service to count as part of the service qualifying for civil pension, it should be taken as carrying with it condonation of breaks, if any, in the Military service, or the break, if any, between the military service and the civil service.

Note 5.? It is permissible under this rule to allow military service inter-spersed between two periods of civil service to count for civil pension: Provided that the condition laid down in this rule are otherwise fulfilled. The share of pension proportionate to military service in such cases will be borne by the Defence Department. Before orders are passed, in any case, the military service of the individual concerned and the amount of gratuity paid to him should be verified by reference to the Defence Accounts Officers concerned.

Note 6.? The sanction regarding the counting of military service should be accorded by the competent authority at the time of appointment of the persons concerned and not at the time of his retirement from civil service. Sanctions accorded in such cases are required specially to mention the amount of gratuity or bonus recoverable, the number of monthly installments in which the bonus or gratuity is to be recovered and the date from which the recovery is to commence. If, in any case, the gratuity is not to be recovered, the fact will be specially stated in the sanction. The gratuity once refunded in order to secure the benefit of counting former military service for civil pension cannot be paid back in any circumstances.

Note 7.? The question of the amount of military or War (Great War) service which a Government employee is entitled to count for civil pension should be considered as soon as he joins a pensionable post. In the case of non-gazetted Government employees, the amount should be shown in a certificate to be recorded in the service Book or the service roll, as the case may be, by the Head of Department who should satisfy himself that the conditions of this rule and Rule 4.6-A or other relevant rules or instructions for counting military service for civil pension are fulfilled. The military service should in all cases be verified after reference to the Defence Accounts Officer concerned. References to the relevant rules should be quoted in the certificates and attested copies of the record relied upon in support of it should be attached. As regards gazetted Government employees, such certificates, together with the necessary documents, should be sent to the Accountant General, Haryana, through the Administrative Department concerned for incorporation in the History of Services. It is not necessary to re-verify military or War (Great War) service which had already been verified before 30th July, 1936, in accordance with the old procedure. Note 8.? See also Notes under Rule 4.6-A.

Note 9.? The expression "gratuity or bonus" occurring in clause (a) refer to service gratuity or bonus only, and not war gratuity or bonus, received as a

reward for war service.

SCHEDULE

1. Commissioned Officers and Junior Commissioned Officers.
2. Warrant Officers, non-Commissioned Officers and other enrolled personnel of the Army, and the corresponding categories of the Navy and Air Force and personnel of the Frontier Constabulary and Militias.
3. Non-combatant departmental and regimental employees and followers of the supplemental services.
4. Warrant Officers and Departmental Officers of the Commissary and Assistant Surgeon classes.

(Though even the amendment made in the year 2004, in Clause (a) of the aforesaid Rule, has been placed on record by the Government, that is not being gone into, as the petitioner actually joined service in the Haryana Government in the year 1999 and therefore any subsequent amendment cannot alter any rule to the detriment of the employee as regards his pension, that being a condition of service (as opposed to promotion, pay-scales etc., which can be changed during the tenure of service also).

11. The petitioner has also placed on record by way of another application, an order dated 22.08.2003 passed by the Chief Secretary to the Government of Haryana, in compliance of an order of this Court dated 20. 09.2002, passed in CWP no.17663 of 2001, the said order of this Court being annexed as Annexure P-12 with the application, which reads as under:-

"We have heard learned counsel for the parties at some length. During the course of arguments, it is commonly conceded before us that this petition is squarely covered by a judgment of the Division Bench of this Court in the case of Capt. V.S. Narwal v. Chief Secretary to Government, Haryana, CWP no.3265 of 1995, decided on 13.11.1995. The Special Leave Petition preferred against the judgment dated 13.11.1995 was dismissed by the Hon'ble Supreme Court of India vide its order dated 31.01.2000.

In view of the above we allow this writ petition in terms of the judgment in the case of Capt. V.S. Narwal (supra). Petitioner would be entitled to the same relief as granted in that case."

The consequential order passed by the Government in favour of the petitioner in the case (one Maj. R.K. Sharma), was that he would be entitled to the benefit of Military Short Service Commission in the Army, towards advance increments and pension, under Rule 4.3 of the aforesaid CSR Vol.II, subject to the condition that he would refund the gratuity received by him from the Army at the time of his discharge/release.

12. The petitioner has, yet further, also placed on record the aforesaid judgment

of the Division Bench in Narwals' case (supra), a perusal of which shows that even in that case, the claim for pension and advance increments equal to the completed years of service rendered in the Armed Forces, was allowed to the petitioners therein, again in terms of Rule 4.3, referred to herein above.

Similarly, the judgment in the case of Capt. Indu Boken v. State of Haryana and others (CWP no.20053 of 2009 decided on 11. 10.2012), has been relied upon by the learned counsel for the petitioner. In the latter case, it is seen that the petitioner therein joined civil service with the State about 4 years and 3 months after she had been released from the Army, (as pointed out by the learned counsel for the petitioner herein, in view of the fact that in the present case also, the petitioner joined service with the Haryana Government about 6 years after he was released from the Indian Navy).

13. Learned counsel for the parties have addressed arguments in terms of the pleadings, with learned State counsel laying stress on the fact that there being a break of service of 6 years between 1983 and 1989, the petitioner cannot take the benefit of the instructions Annexure P-10, which are applicable only to Central Government employees who have been absorbed in the State Government (and vice versa), with the petitioners' appointment being a fresh appointment and not an absorption.

14. Having considered the aforesaid, whereas learned counsel for the State may be correct as regards the aforesaid instructions of the Government, eventually I do not see how the stand of the State is otherwise any way tenable, in the face of Rule 4.3 of the CSR Vol.II, as applicable to the State of Haryana. However, before going to that aspect, the contention of the petitioner as regards the instructions he is relying on, needs to be considered.

15. As regards the petitioners' claim for grant of such increments in terms of the instructions Annexure P-3, dated 22.01.1991, I agree with the stand of the State Government, to the effect that the instructions were never adopted by the Haryana Government and were only applicable to those ex-servicemen who joined service under the Central Government after their discharge/release from Military service.

Coming to the instructions specific to ex-combatant Clerks who joined in the clerical cadre in civil service after release from the Armed Forces, again I agree with the learned counsel for the respondents, that though the said instructions of 1998 and 1999 were adopted by the Haryana Government pursuant to directions given by this Court in CWP no.11351 of 1995, the petitioner cannot take advantage of them. Though the contention of the petitioner is to the effect that two sets of employees of the same category, i.e. Ex-Servicemen, are discriminated against by the fact that only ex-combatant Clerks are given that benefit, however, the petitioner not having shown in any manner that he is identically placed as those in the clerical cadre, both, during Naval service, and in civil service, either in terms of work content or otherwise, the discrimination

cannot be said to be arbitrary.

16. Having seen that, it is nevertheless also seen that Rule 4.3 postulates that all Military service rendered upon attaining the age of 18 years, as is pensionable under Military rules, but which terminates before a pension has been earned, may, at the discretion of Government, be allowed to count for pension when followed by service qualifying for pension under Civil Rules, subject to the condition that any bonus or gratuity received in lieu of pension on discharge from Military service, would be refunded by the employee in monthly installments, not normally exceeding 36 installments.

Clause (b) of the aforesaid rule stipulates that military service "which does not terminate before a pension has been earned in respect of it shall not be allowed to count" (for pension in civil service without the sanction of the competent authority).

In other words, service in the military which terminates after a pension has been earned in respect thereof, shall be countable towards civil pension, but only with the sanction of the competent authority. If looked at from that aspect, the petitioners' service in the Navy never having been sanctioned for counting towards civil service, the stand of the respondents would not otherwise be rejectable; but for the fact that in Narwals' and in Indu Bokens' cases (supra), similar claims of those petitioners were allowed. Further, the cause of action being a recurring one, with the petitioners' pension to be paid to him every month after his retirement, other than his present pay also being affected monthly, if the benefit of naval service is not given to him. Therefore, in my opinion the rule has to be interpreted liberally.

17. It is also necessary to consider the Notes below Rule 4.3, as reproduced hereinabove.

(i) As regards Notes 1 and 7, the reference to the Great War is in respect of World War-I, as has been clarified in the rules themselves, they having been promulgated during British rule, after 1918.

(ii) As regards Note 2, it would be inapplicable, as the petitioner undoubtedly has taken his discharge from the Navy 6 years prior to his even joining civil service.

(iii) Note-3, pertaining to employees of the Military Police, is again inapplicable.

(iv) Note 4 is important, inasmuch as, it postulates that once an order is passed allowing previous military service to qualify for civil pension, all breaks in military service and between military service and civil service, would stand condoned.

Thus, if this Court is to allow the petition on merits otherwise, the contention of learned counsel for the State that military service cannot be counted towards pension for civil service because of the break of 6 years in between, in the case of the petitioner, would be a contention that would stand negated.

(v) As regards Note 5, it again is not applicable as it postulates a situation where

military service is inter-spersed between two periods of civil service, which is not the case of the petitioner.

(vi) Note 6, of course, is important, inasmuch as it stipulates that sanction regarding counting of military service should be accorded by the competent authority at the time of appointment of the person concerned in civil service and not at the time of his retirement. That has already been commented upon by this Court hereinabove, while noticing clause (b), to the effect that undoubtedly in the petitioners' case he would otherwise not be entitled to counting of military service, he not having asked for it at the time when he joined civil service; but for the fact that in similar cases, this Court has allowed those petitions.

Also, in any case, with any arrears found due to the petitioner, on account of counting military (Navy) service, being restricted by this Court to 3 years and 2 months prior to the filing of the present writ petition, in my opinion, it would make very little difference as to whether the sanction was granted at the time when the petitioner entered civil service or when he is about to retire.

(vii) Note 8 actually refers to the note below Rule 4.6-A which pertains to appointments against "War Reserve vacancies", which again is inapplicable in the case of the present petitioner.

(viii) Note 9 only clarifies that the expressions "gratuity" and "bonus" do not refer to gratuity or bonus received as a reward for war service but those received as service gratuity or bonus, which if received by the employee at the time of discharge from military service, are to be refunded by him if he seeks to avail the benefit of that service towards civil pension.

18. It needs further to be noticed that Rule 4.3 *ibid* does not postulate the grant of any advance increments but only counting of service in the Military (Navy in this case) towards pension; however, that would amount to granting of 'deemed increments', as were earned by the petitioner in the Navy after he had attained 18 years of age, if those many years of service are added to his service in the State Government.

Yet, such advance increments cannot be actually granted to him in terms of Rule 4.3 and would be deemed to have been given to him; for the reason that Rule 4.3 does not stipulate grant of any such actual increment, obviously so for the reason that such increments were actually given to him each year that he served in the Navy.

19. In view of what has been discussed hereinabove, this petition is partly allowed, to the extent that though the petitioner may not be granted the benefit of actual advance increments, equivalent to the number of years he had spent in Naval service after the age of 18 years, yet, even in terms of Rule 4.3 (a) (unamended) as it stood at the time that he entered civil service, read with the judgments in Capt. V.S. Narwals and Capt. Indu Bokens' cases, he would be entitled to the benefit of such service towards pension, after counting such

service towards civil service, provided he refunds his retirement benefits as were granted to him when he left Naval service, either in lumpsum or in equal monthly installments extending up to 36 months.

It may be stated here that the break in service of 6 years between discharge from Naval service and when the petitioner joined State service, would be immaterial, also in view of the fact that the petitioner is not to be granted the benefit of that break but only the benefit of years that he spent in the Navy after he attained the age of 18 years.

20. In view of the fact that the petitioner himself never approached the authorities for the benefit that he is claiming now, right till he retired from the State Government, there shall be no order as to costs in his favour.