
(2013) 09 P&H CK 0174
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 10610 of 2012 (O and M)

Hans Raj Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Army Act, 1950 — Section 3(xix), 19, 22, 63, 162(2), 179, 179(5)(a)
Army Rules, 1954 — Rule 13, 18, 18(1), 18(2), 18(3)
Constitution Of India, 1950 — Article 14
Pension Regulations For The Army, 1961 — Regulation 132

Citation : (2014) 173 PLR 517

Hon'ble Judges : Sat Paul Bangarh, J; S.S. Saron, J

Bench : Division Bench

Judgement

S.S. Saron, J.

C M No. 12570-CWP of 2013

1. Copy of Government order dated 14.08.2001 (Annexure A-1) attached with the civil miscellaneous application is taken on record. Another Government order dated 21.07.2004 submitted by the learned counsel for the petitioner in Court is also taken on record.

CM stands disposed of.

CWP No. 10610 of 2012

The petitioner seeks quashing of the orders dated 03.11.2011 and 18.01.2012 whereby the application of the petitioner on its transfer to the Armed Forces Tribunal, Regional Bench, Chandigarh ("Tribunal" - for short) (respondent No. 4) and review application filed by the petitioner have been dismissed. A further prayer has been made by the petitioner for quashing the orders dated 30.04.1996 (Annexure P-4) and dated 12.04.1998 (sic. 23.03.1989) (Annexure P-2) whereby the discharge of the petitioner from Army service has been made with retrospective effect and for directing respondents No. 1 to 3 to grant service

pension to the petitioner with effect from 23.03.1989, that is, from the date of his discharge. In terms of the reply filed by the respondents, the question of maintainability of the writ petition has also been raised.

2. Insofar as the question regarding the jurisdiction of this Court is concerned, it may at the outset be noticed that a Division Bench of this Court in the case 15165 Flight Lieutenant Onkar Singh Bawa v. Union of India and others, CWP No. 6927 of 2011 decided on 25.1.2013 inter alia observed as follows:--

We are conscious of the fact that the statutory appeal against such an order is provided u/s 30 of the Armed Forces Tribunal Act, 2007 (for short ? "the Act"), however, having regard to the Constitution Bench judgment of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, and also that of Delhi High Court in CWP No. 13360 of 2009 titled as "Colonel A.D. Nargolkar v. Union of India and Ors" decided on 26.4.2011, following the aforesaid judgments in the context of this very Act, we are deciding this petition on merits. Accordingly, we have heard learned counsel for the parties on merits of the writ petition.

3. In L. Chandra Kumar Vs. Union of India and others, it was held that power of judicial review is a basic and essential feature of the Constitution. Broadly speaking, it was held that judicial review in India comprises of three aspects; (i) judicial review of legislative action, (ii) judicial review of judicial decision and (iii) judicial review of administrative action. The Judges of the Superior Courts have been entrusted with the task of upholding the Constitution and to this end have been conferred the power to interpret it. It is they who have to ensure the balance of power envisaged, by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. Therefore, this Court going by the decision in L. Chandra Kumar's case (Supra) has power of judicial review in respect of the judicial decisions of the Tribunal in terms of Article 226 of the Constitution.

4. In view of the above, the writ petition is held to be maintainable.

5. The petitioner initially rendered Army service of 8 years and 332 days. Thereafter, he was enrolled in the Defence Security Corps (DSC - for short) on 09.03.1983. The petitioner was served with a charge sheet (Annexure P-1) on account of an act prejudicial to good order and military discipline. It was alleged that at Ambala Cantt. between 22.00 hours and 22.30 hours on 02.03.1987 while at post No. 2, he improperly and without authority fired one round in the air from his 7.62 mm bolt action rifle. In the order of the Tribunal, it is recorded that the petitioner while on duty was forced to fire one round in the air to save himself from the aggressor, who was another sepoy of the platoon and was armed with a rifle. The petitioner was tried by a Summary Court Martial and in terms of order passed on 12.04.1988, he was found guilty and dismissed from service. The petitioner filed a writ petition (CWP No. 5988 of 1989) in this Court for supplying him proceedings of the Court Martial. The said writ petition was

allowed by this Court. The petitioner in the meantime filed a petition u/s 164(2) of the Army Act, 1950. The General Officer Commanding in Chief vide order dated 23.03.1989 (Annexure P-2) on the post confirmation petition dated 25.07.1988 submitted by the petitioner against the award of the Summary Court Martial partially agreed with the recommendations of the General Officer, Commanding PH and HP Area. The sentence of dismissal awarded to the petitioner was commuted to discharge; besides, it was directed that the petitioner shall be deemed to have been discharged with effect from the date of original sentence of dismissal became operative.

6. The petitioner then filed a writ petition (CWP No. 17050 of 1989) in this Court which was taken up for hearing on 11.01.1995. By this time, the petitioner was due for retirement on superannuation from service. The writ petition was disposed of vide order dated 11.01.1995 (Annexure P-3). It was observed by the learned Single Judge of this Court that even though the petitioner had raised several grounds to challenge the impugned action of his discharge, his learned counsel stated that he had remained unemployed since 1989 from the date of his discharge and was in a bad shape and he would be satisfied if the authorities reconsider his claim for grant of pension sympathetically. It was pointed out that the petitioner had rendered more than 15 years of service by 23.03.1989 i.e. the date of his discharge from service vide order Annexure P-2. It was also submitted that the factors which weighed with the authorities while commuting the punishment from dismissal to discharge were that the petitioner would be able to earn his pension. The learned Senior Standing counsel for the Union of India submitted that if the petitioner makes a representation to the competent authority within one month from 11.01.1995, it would be considered and decided sympathetically. In view of the above, it seemed fair to this Court that the petitioner should be allowed to make a representation to the respondents for grant of pension. In case such a representation was made within one month from 11.01.1995, the competent authority if was directed shall consider it sympathetically and decide it as expeditiously as possible. It was further observed that keeping in view the fact that the petitioner had completed more than 14 years of service as on the date of his dismissal from service and more than 15 years on 23.03.1989, when he was ordered to be discharged from service, it would be fair and proper if his claim was considered sympathetically. In fact insofar as the petitioner was concerned, it was observed that there would be no difference to him between dismissal or discharge from service unless his claim was considered for the grant of pension. In view of the totality of the circumstances, the writ petition was disposed of with the direction that the petitioner shall make a representation within one month from 11.01.1995 which the respondents were to consider and decide. It was clarified that in case the respondents consider his claim for grant of pension, he shall not be entitled to claim any arrears of pension etc.

7. In consequence of the order dated 11.01.1995 (Annexure P-3) passed by this Court, the petitioner submitted a representation dated 10.02.1995. According to

the petitioner his main submission was that the order of his discharge from service was not liable to be made with retrospective effect and it is to be prospective. The order dated 23.03.1989 (Annexure P-2) commuting the sentence of dismissal to discharge, it was submitted was made in a manner that it brought in operation the discharge of the petitioner from service with the retrospective date. It was also submitted by the petitioner that he had rendered 5 years, 1 month and 3 days service in the DSC and he had a continuous service of 9 years in the Army which was required to be added to the present service for the purpose of pension. He in fact had 14 years and 1 month of service to his credit. Service of five months more would have been required so as to entitle the petitioner to earn his pension on commutation of his sentence of dismissal to discharge. However, the petitioner had more than 15 years of service to his credit on the date when his sentence of dismissal was commuted to discharge i.e. On 23.03.1989 (Annexure P-2).

8. The representation of the petitioner was considered by the Government of India, Ministry of Defence vide impugned order dated 30.04.1996 (Annexure P-4). It was inter alia mentioned that the representation of the petitioner dated 10.02.1995 had been considered de novo in the Ministry of Defence in consultation with the Army Headquarters. It was found that the petitioner had been charged u/s 63 of the Army Act, 1950 which relates to violation of good order and discipline. He was tried by the Special Court Martial on 12.04.1988 and he was awarded punishment of "dismissal from service". Accordingly, he was dismissed from service with effect from 12.04.1988. Subsequently in pursuance of the post confirmation petition dated 25.07.1988 submitted by the petitioner, the General Officer Commanding in Chief, Western Command commuted the sentence of "dismissal" to "discharge". It was also directed that the date of discharge of the petitioner from service would be effective from the same date from which the original sentence of dismissal became operative i.e. with effect from 12.04.1988. It was further observed that in view of the foregoing, it was clear that there was no dispute regarding the date of discharge of the petitioner from service, which was 12.04.1988. It was also observed that no retirement benefits as otherwise due on 12.04.1988 would have been admissible to the petitioner had he been dismissed from service, however, the retirement benefits as per admissibility were payable to him under the Army Pension Regulations. Thus by commuting his sentence from dismissal" to "discharge", he was held entitled to receive retirement benefits as dismissal under Rules depending on the length of service rendered by him upto 12.04.1988. As per service record of the petitioner, the total qualifying service on the day of his discharge from service i.e. on 12.04.1988 worked out to 14 years and 1 day only, which included his earlier service of 8 years and 330 days. In this manner, there was a short fall of 11 months of service required for 15 years service for grant of pension. Service pension was, therefore, not admissible to him in terms of Regulation 132 of the Pension Regulations for the Army, 1961 (Part I). Further, condonation of deficiency in service only upto 6 months was permissible under the Pension

Regulations. In case of the petitioner, the deficiency in service was more than six months and the same, it was observed, could not be condoned. The petitioner was, however, held entitled to grant of Service Gratuity, Death cum Retirement Gratuity amounting to Rs. 22,325/- for 14 years of service which had already been paid to him. The service gratuity otherwise would not have been admissible to him had his punishment not been commuted from "dismissal" to "discharge". In view of the foregoing position, it was held that no pension was payable to him under the Rules. The petitioner now claims for the grant of pension.

9. Notice of motion was issued to the respondents.

10. Reply has been filed on behalf of the respondents. It has inter alia been submitted that the petitioner initially served with the Sikh LI for the period from 23.07.1973 to 29.09.1982. He served with the Sikh LI for more than 9 years. Thereafter he was enrolled in the DSC on 09.03.1983. His qualifying service countable towards pension/gratuity in DSC was only 8 years and 332 days after deducting 102 days being non-qualifying service due to absence from service of the petitioner for the periods from 13.08.1973 to 05.09.1973; 20.08.1977 to 17.09.1977 and from 02.08.1981 to 20.09.1981. Accordingly his formal service of 8 years and 332 days was counted towards pension/gratuity in DSC by the PAO (OR) DSC. The petitioner was posted in RR to 140 B DSC Platoon attached to HQ 448 Coy ASE (Pet) Ambala Cantt. on 25.12.1986 and not during 1983 as mentioned in the writ petition. He was involved in disciplinary proceedings while serving with 140 B DSC Platoon attached with Head Quarters 448 Coy ASC (Pet) Ambala Cantt.

11. Learned counsel for the petitioner has contended that the petitioner is entitled for the benefit of pension as he has rendered 15 years of service till the date of his discharge from service on 02.03.1989. In any case, it is submitted that even if it is taken that the petitioner has rendered 14 years and 1 month of service, the period of short fall of 11 months for qualifying service for grant of pension is liable to be condoned in terms of Government of India order dated 14.08.2001 (Annexure A-1) and Government of India order dated 21.07.2001 mat have been filed. Therefore, the petitioner is liable to be given the benefit of pension.

12. In response, learned counsel for the respondents has placed strong reliance on Note 5 (a) of Section 179 of the Army Act, 1950 which is placed on record as Annexure R-1. The same envisages that a sentence of dismissal might be remitted on the condition that the person sentenced shall not receive pay in respect of or count service for any purpose during the period spent under dismissal; besides, the conditions, if any must be clearly stated that the writ ten acceptance of the person obtained and that the mitigation or commutation cannot be made conditional. Therefore, it is submitted that the petitioner is not entitled for any benefit of pension.

13. We have given our thoughtful consideration to the matter.

The factual aspects are not much in dispute. The petitioner has rendered initial service with the Sikh LI for the period from 23.07.1973 to 29.09.1982. The said service according to the Army records works out to about 8 years and 332 days. Thereafter, the petitioner was enrolled in the DSC on 09.03.1983 in which he continued till the date of his dismissal from service on 12.04.1988. This was subsequently vide order dated 23.03.1989 commuted to discharge. It was directed that the petitioner shall be deemed to have been discharged with effect from the date the original sentence of dismissal became operative, that is, from 12.04.1988. In this manner the petitioner had 14 years and 1 month of service. The qualifying service for grant of pension is undisputedly 15 years. There is, therefore, a short fall of 11 months of service for entitlement for pension. However, in case the service of the petitioner is to be taken to have been dispensed with from 23.03.1989 when his sentence of dismissal was commuted to that of discharge, he completes 15 years of service.

14. Two fold questions, therefore, would require consideration as to whether the short fell of 11 months of service so as to have the necessary qualifying service for entitlement for pension can be condoned; and whether the order of commutation of dismissal from service to that of discharge in respect of the petitioner becomes effective from the date of the order of discharge, that is, from 23.03.1989.

15. The learned Armed Forces Tribunal in its impugned order dated 03.11.2011 inter alia observed that a look at the order dated 30.04.1996 (Annexure P-4) by which the representation of the petitioner was declined showed that it proceeded on the basis of the provisions of Regulation 132 of the Pension Regulations and the reason given was that condonation in deficiency of service only up to 6 months was permissible, while in the case of the petitioner, it was more than 6 months. Therefore, he was not held entitled to service pension, besides, service gratuity had already been paid to him. Regulation 132 of the Pension Regulations for the Army, 1961 Part 1 relates to minimum qualifying service of pension, which reads as under:--

Minimum Qualifying Service for Pension

132. The minimum period of qualifying service (without weightage), actually rendered and required for earning pension shall be 15 years

16. The learned Tribunal, therefore, relying on the said provision and the instructions applicable held that for condonation of deficiency of service that was permissible was only up to six months while in the case of the petitioner it was more than six months. As such, he was not held entitled to service pension. The petitioner has, however, placed on record Government of India order dated 14.08.2001 (Annexure A-1) according to which the shortfall in qualifying service for grant of pension in respect of PBOR (personnel below officers rank) can be beyond six months and upto 12 months. The relevant extract of the said Government of India order dated 14.08.2001 (Annexure A-1) reads as under:--

Sanction is hereby accorded in pursuance of MOD ID No. 34 (3)/2001/D (O & M) dated 3.08.2001 for delegation of administrative powers with the approval of Raksha Mantri to the Service Hqrs in respect of the subject indicated below:--

(a) (i) to (iv) xxxxx

(v) Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR (Personnel below officers rank) beyond six months and upto 12 months.

(vi) to (xiv) xxxxx

(b) xxxx

(c) xxxx

(d) xxxx

2 to 5. xxxxx

6. These orders will take effect from the date of issue.

7. xxxxx

17. The above Government order envisages that the Government of India has with the approval of the Raksha Mantri (Defence Minister) delegated administrative powers to Service Head Quarters for condonation of short fall in qualifying the service for grant of pension in respect of personnel below officers rank beyond six months and upto twelve months. The order, however, takes effect from the date of issue i.e. 14.08.2011. This has, however, been further clarified by the Government vide order MOD ID No. 12 (2)/04/Den/Sers dated 21.07.2004 which has been placed on record and reads as under:--

Ministry of Defence

Subject: Condonation of short fall in qualifying service for grant of pensionary benefits in respect of personnel below officer ranks beyond six months and upto twelve months- clarification regarding.

Kindly refer to CGDA ID Note No. 5669/ATP/Contempt/R.H. Ghatak dated 16.07.2004 on the subject cited above and to state that the matter has been considered in consultation with IA (def) in the Ministry of Defence. It is clarified that the services Hqrs are empowered to exercise the powers delegated to them vide order No. 4684/Dir(P)/2001 dated 14.08.2001 even to the cases which were pending with prior to issue of the orders. However, they are required to exercise the power in the interest of justice, equity and fair play.

As discussed on telephone on 21.07.2004, CGDA/PCDA (P), Allahabad is requested to take further necessary action in the light of above clarification.

Harbans Singh Dir (Pen)

18. A perusal of the above shows that it has been clarified that the services

headquarters are empowered to exercise the powers delegated to them vide order dated 14.08.2001 (Annexure A-1) even to the cases which were pending with prior to issue of the orders. However, they were required to exercise the power in the interest of justice, equity and fair play. Therefore, even in respect of pending cases the power can be exercised for condoning the short fall or deficiency in qualifying service from six months to twelve months. The said orders dated 14.08.2001 (Annexure A-1) and 21.07.2004 were not urged or brought to the notice of the learned Tribunal. The learned Tribunal in its impugned order inter alia observed that a period of short fall of six months only could be condoned and not eleven months. The same, would not be sustainable and in fact a period of up to twelve months can be condoned. The petitioner has a short fall of eleven months which can be condoned and this in fact is the tenor, intent and spirit of the order dated 11.01.1995 (Annexure P-3) passed by this Court in the writ petition filed by the petitioner whereby he restricted his claim for the grant of pension only which was to be considered sympathetically by the Union of India in accordance with the stand taken on its behalf by the learned Senior standing counsel appearing for it. Therefore, the period of eleven months was liable to be condoned.

19. As regards the other condition with regard to the effective dates for discharge, the learned counsel for the respondents has placed strong reliance on Note 5(a) of Section 179 of the Army Act, 1950. The said Note 5(a) of Section 179 of the Army Act, 1950 reads as under:--

A sentence of dismissal might be remitted on the conditions that the person sentenced shall not receive pay in respect of or count service for any purpose during the period spent under dismissal. The conditions, if any must be clearly stated that the written acceptance of the person obtained. Mitigation or commutation cannot be made conditional.

20. In terms of the above note, sentence of dismissal might be remitted on the condition that the person sentenced shall not receive pay in respect of or count service for any purpose during the period spent under dismissal and the conditions, if any, must be clearly stated and that the written acceptance of the person obtained.

21. Besides, mitigation or commutation cannot be made conditional. However, the above is only a note u/s 179 of the Army Act, 1950 which relates to pardon and remission. The said note, even otherwise relates to the period spent under dismissal. The same in any case would not over ride the provisions of the Army Act 1950, the Army Rules 1954 or the Pension Regulations for the Army, 1961. The claim of the petitioner if permissible under the relevant statutory rules and regulations cannot be defeated by reference to a note. The question, in fact that requires to be considered for the grant of pensionary benefits is the date from which the order of discharge becomes effective. Section 22 of the Army Act, 1950 and Rule 18 of the Army Rules, 1954 deal with this aspect. The same read as under:--

Section 22. Retirement, release or discharge.--Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.

Rule 18. Date from which retirement, resignation, removal, release, discharge or dismissal otherwise than by sentence of court-martial takes effect:--

(1) The dismissal of an officer u/s 19 or the retirement, resignation, release or removal of such officer shall take effect from the date specified in that behalf in the notification of such dismissal, retirement or removal in the Official Gazette.

(2) The dismissal of a person subject to the Act, other than an officer whose dismissal otherwise than by sentence of a court-martial is duly authorised, or the discharge of a person so subject whose discharge, if duly authorised, shall be carried out by the commanding officer of such person with all convenient speed. The authority competent to authorise such dismissal or discharge may, when authorising the dismissal or discharge, specify any future date from which it shall take effect.

Provided that if no such date is specified the dismissal or discharge shall take effect from the date on which it was duly authorised or from the date on which the person dismissed or discharged, ceased to perform military duty whichever is the later date.

(3) The retirement, removal, resignation release, discharge or dismissal of a person subject to the Act shall not be retrospective.

21. Section 22 of the Army Act provides that any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed. "Prescribed" has been defined in Section 3(xix) to mean prescribed by rules made under the Army Act. Rule 18 inter alia relates to the date from which dismissal or discharge is to take effect. In the present case, as has already been noticed, the petitioner was tried by the Summary Court Martial and in terms of order passed on 12.04.1988, he was dismissed from service. Thereafter, the General Officer Commanding in Chief vide order dated 23.03.1989 (Annexure P-2) on the post confirmation petition submitted by the petitioner commuted the dismissal to discharge. It was, however, directed that the petitioner shall be deemed to have been discharged with effect from the date of original sentence of dismissal became operative. However, the effective date of dismissal or discharge is to be determined in accordance with the Rule 18 of the Army Rules, 1954. It is well-known that if a procedure is prescribed by the Rules, then that procedure alone is to be followed and all other procedures are forbidden. Therefore, there being a provision in terms of Rule 18 of the Army Rules, the effective date for determining the dismissal or discharge, as the case may be, is Rule 18 of the Army Rules. Sub-rule (1) of Rule 18 envisages the dismissal of an officer u/s 19 (which provides that subject to the provision of the Army Act and the rules and regulations made thereunder, the Central Government may dismiss, or remove from the service any person subject to the

Army Act) or the retirement, resignation, release or removal of such officer shall take effect from the date specified in that behalf in the notification of such dismissal, retirement or removal in the Official Gazette. There is no official gazette notification placed on the record from which the petitioner can be said to have been released and neither is the petitioner an officer. He in fact is a personnel below officer rank (PBOR). Therefore, Sub-rule (1) of Rule 18 is inapplicable. Sub-rule (2) of Rule 18 relates to dismissal of a person subject to the Army Act, other than an officer whose dismissal otherwise than by sentence of court martial is duly authorized or the discharge of a person so subject whose discharge, if duly authorized, is to be carried out by the Commanding Officer of such person with all convenient speed. It is further provided that the authority competent to authorize such dismissal or discharge may, when authorizing the dismissal or discharge, specify any future date from which it shall take effect. In terms of the proviso, if No. such date is specified, the dismissal or discharge is to take effect from the date on which it was duly authorized or from the date on which the person dismissed or discharged ceased to perform military duty whichever is the later date. In terms of Sub-rule (3) of Rule 18, the retirement, removal, resignation, release, discharge or dismissal of a person subject to the Act shall not be retrospective. In the present case the initial dismissal by way of Court Martial was later on commuted to discharge. The object of discharge was primarily to grant pensionary and retiral benefits to the petitioner which he otherwise would not have been entitled to in the case of dismissal; besides, Sub-rule (2) provides for dismissal or discharge from a future date from which it shall take effect and Sub-rule (3) provides that it shall not be retrospective. In *Inder Pal Singh Vs. Union of India (UOI) and Others*, , a Division Bench of this Court considered the case of a Sepoy who injured another Sepoy negligently and was tried by a Court Martial and dismissed from" service. It was held that the competent authority had the jurisdiction to modify the order of dismissal to one of discharge; besides, after referring to Rule 18 of the Army Rules and particularly Sub-rule (3) held that the said Sub Rule imposes a restriction that in no case the discharge could be made with retrospective effect. It was further observed that a bare reading of the entire Rule 18 makes it clear that the competent authority may order the dismissal or discharge from a future date. In no circumstances such order could be made from a retrospective date. This Court in the said case was also of the opinion that whether the discharge was made in the ordinary course or had been made as a matter of punishment, in no case, the same could be made with retrospective effect. It was also held that there was no force in the contention of the respondents that the provisions of Rule 13 or 18 were not applicable in the case of the petitioner because he had been punished for dismissal from service by the Summary Court Martial and thereafter he ceased to be a member of the service and the Army Rules were only applicable to the persons who were still in service and subject to the Army Act. It was held that merely because the petitioner was punished by the Court Martial, it could not be said that the aforesaid rules were not applicable on him and the punishment of discharge could be given to him with retrospective effect.

Consequently, the impugned order in the said case to the extent vide which the petitioner was ordered to have been discharged from service from the date his dismissal order became effective, was set aside and the order of discharge of the petitioner, it was held, would be effective from the date it was passed by the Vice Chief of Army Staff. Applying the ratio of said judgment in the present case the discharge of the petitioner would be effective from the date it was passed i.e. in terms of order dated 23.03.1989 (Annexure P-2).

22. The learned Tribunal referred to the said judgment in *Inder Pal Singh v. Union of India* (supra) and it was held that the earlier petition (i.e. CWP No. 17050 of 1989) was filed after the order dated 23.03.1989 (Annexure P-2) was passed regarding discharge being effective from the date of original sentence of dismissal became operative and the said writ petition was to challenge the entire action of dismissal or discharge taken against the petitioner. It was found that from the order dated 11.01.1995 (Annexure P-3), the order dated 23.03.1989 (Annexure P-2) had been taken into account in that order. Obviously, therefore, the litigation, it was observed, had already culminated in the order dated 11.01.1995, wherein the contention regarding the impermissibility of discharge being effective from the date, the original punishment order was operative was not pressed into service. As such it could not be allowed to be raised. Therefore, the learned Tribunal was of the view that since the contention regarding the effective date of discharge was not pressed while disposing of the writ petition (CWP No. 17050 of 1989) vide order dated 11.01.1995, the original punishment was operative and it could not be allowed to be raised now. However, we are of the view that since the claim of the petitioner is for grant of pension and the question -whether he has the requisite entitlement of service for grant of pension is germane to the matter in issue, it can well be raised and taken into account so as to consider his case for the requisite service rendered for the benefit of pension. In fact for the grant of pension the rules can be read down so as to grant the same. Therefore, keeping in view the ratio of judgment in *Inder Pal Singh's* case (supra), we are of the view that the order of discharge from service became effective from the date of passing the order, that is, from 23.03.1989 (Annexure P-2) whereby the dismissal from service of the petitioner was commuted to discharge. By the said date, that is 23.03.1989, the petitioner had the requisite 15 years of service. As such, on both or any of the account, that were formulated, the petitioner would be entitled to pension.

23. Consequently, the writ petition is liable to be allowed. However, in the order dated 11.01.1995 passed in CWP No. 17050 of 1989 it was clarified by this Court that in case the respondents consider the case of the petitioner for the grant of pension, he would not be entitled to claim any arrears of pension etc. The said restriction was for the respondents. However, keeping in view the spirit of the said order the arrears are liable to be restricted to a period of three years earlier to the filing of CWP No. 9915 of 1996 in this Court, that is, from 08.07.1996. Accordingly, the writ petition is allowed, the petitioner would be entitled to pension for the service rendered by him for a period of 15 years. However, the

arrears shall be restricted to three years earlier to the filing of CWP No. 9915 of 1996 in this Court, that is, from 08.07.1996 for which the pension be calculated and paid to the petitioner. For the period the matter remained pending in this Court and in the Tribunal, the petitioner cannot be said to be at any fault and he would be entitled to pension for the said period as well. There shall, however, be no costs.