
(1997) 08 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3489 of 1994

Jang Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 18-08-1997

Acts Referred:

Punjab Government National Emergency (Concession) Rules, 1965 — Rule 2, 4

Citation : (1997) 117 PLR 271

Hon'ble Judges : Swatanter Kumar, J;S.K. Kumaran, J;H.S. Brar, J

Bench : Full Bench

Advocate : R.C. Chatrath, for the Appellant; Hemant Gupta, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—In this writ petition under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of appropriate writ, order or direction specially in the nature of mandamus directing the respondents to grant the benefit of "military service" rendered by them during the National Emergency period, for the purpose of seniority and other consequential benefits, which they are entitled to in accordance with the Punjab Government National Emergency (Concessions) Rules, 1965, as also extended to the emergency period of 1971 (hereinafter referred to as the Rules). Before we proceed to discuss the pre-dominant features of this case which had persuaded the Division Bench of this Court to refer the matter to the Full Bench, it would be appropriate, for us to refer to the facts of the case in brief.

2. The petitioners except petitioner No. 1 joined the military service prior to the date of proclamation of national emergency on 26.10.1962, while petitioner No. 1 joined military service on 20.1.1966 and served there till 3.10.1973. The relevant dates with regard to service of the petitioners during emergency period and joining education Department as appeared from the record are as under:-

"Jang Singh, D.P.E. Service during emergency : 20.1.1966 to 10.1.1968 Date of joining Education Department: (Ad hoc) 16.4.1979 Salwan Singh, D.P.E. Service during emergency : 1.11.1962 to 12.3.67 Date of joining Education Department. (Ad hoc) 21.7.1967 Darshan Singh, P.T.I. Service during emergency: 1.11.1962 to 9.12.66 Date of joining Education Department 6.2.1967 Gurdip Singh, P.T.I. Service during emergency : 1.11.1962 to 5.12.1966 Date of Joining Edu. 11.10.1968 Department, as P.T.I. (Ad hoc)

All the petitioners were regularised between 1972 to 1980. These petitioners have claimed that after their release from the armed forces, they were given employment in the Department of Education, Punjab Chandigarh. The petitioners claim benefits of military service rendered by them during emergency for the purposes of seniority, increments, re-fixation of salary and other admissible allowances in accordance with the rules applicable to their present employment. In order to raise valid claim, these petitioners served a legal notice upon the respondents dated 4.3.1994, Annexure P-6 to this petition. The claim of the petitioners in their legal notice was based upon the judgments of this Court and the Rules. As the petitioners were not given any relief in furtherance to the notice served by them upon the respondents, they were left with no other alternative but to file the present writ petition.

3. As already noted, the petitioners have raised various grounds in their writ petition to support their claim before the Court and amongst others, they rely upon the judgment of a bench of this Court in Civil Petition No. 2602 of 1989 Harcharan Singh v. State of Punjab and Anr., decided on 5.6.1990 and the judgment delivered by Division Bench of this Court in Civil Writ Petition No. 10633 of 1988 Narinder Nath Sharma v. State of Punjab, decided on 27.8.1992. The respondents filed reply to the writ petition in which there was hardly any dispute to the facts of the case and the only plea taken was that all other petitioners except Jang Singh were not entitled to concessions as they were not eligible according to the interpretation of the relevant Rules by the State Government. It was further stated that Shri Jang Singh joined military service during emergency, while other petitioners joined prior thereto. The case of Jang Singh is stated to be under active consideration of the Government, however, no final decision has been taken as yet.

4. Though no rejoinder was filed on behalf of the petitioners to the reply filed on behalf of the State, but an application u/s 151 of the Code of Civil Procedure, being Civil Misc. No. 4059 of 1995, was filed to place on record Annexure P-7. This application was allowed by the Court and Annexure P-7 was directed to be taken on record. The relevant extract of Annexure P/7, which is a letter dated 8.12.1993 by the Director of Social Welfare, Punjab, needs to be referred as it would be of some consequence during discussion of the case on merits by us:

"Subject:- Eligibility criteria for military service benefit to those who served during the emergency even if they had joined the army prior to the proclamation of emergency.

I am directed to refer to the subject noted above and draw your attention towards the latest judgment in C.W.P. No. 10292 of 1989 decided on 13.1.1992. In its verdict of the Punjab & Haryana High Court has held that the military service as defined in Rules 2 of the Punjab Government National Emergency (Concession) Rules, 1965 does not differentiate between a person who was enrolled or commissioned in the Indian Army prior to the proclamation of emergency or during or thereafter.

2. Earlier this concession was disallowed in certain cases to persons who had joined military service prior to the proclamation of emergency in view of the judgment in Nirmal Singh v. PSEB. The Legal Remembrancer has advised in view of the latest judgment referred to above (Para 1) that the judgment in the case of Nirmal Singh v. PSEB need not be adopted in other cases.

3. It is, therefore, directed that all such cases where military service benefit was denied to the Ex-service re-employed in the Civil on the ground that they had joined military service prior to the proclamation of emergency, may now be decided in the light of the judgment in CWP No. 10292 and the advice of L.R. thereon.

4. The subject relating to the policy matters pertaining to Ex-servicemen had since been transferred to this department from the department of personnel vide Government notification No. 1/7/91-GC(S)/17581, dated 28.9.1992. All such cases regarding service matters may, therefore, be referred to this department for advice in future."

5. When this writ petition, after notice, came up for hearing, the Division Bench of this Court took the view that the judgment of the Supreme Court in the case of Dhan Singh v. State of Haryana 1991(1) S.L.R. 200 was not correctly applied by the Division Bench of this Court in the case of Narinder Nath Sharma (supra). The Bench felt that the aforesaid judgments of the High Court do not lay down correct law and consequently referred the matter to larger Bench vide order dated 29.7.1994, which reads as under :-

"Present:- Mr. R.C. Chatrath, Advocate with Ms. Anu Chatrath, Advocate; Mr. S.S. Shergill, AAG, Punjab.

In spite of observations made by the Supreme Court in Dhan Singh v. State of Haryana, 1991(1) Service Law Reporter 200 in para 12 of the judgment, the definition of "Military Service", as defined under Rule 2 of the Punjab Government National Emergency (Concession) Rules, 1965, has not been correctly appreciated in two cases decided by the Division Bench, relating to Punjab. These two cases are:-

(1) Civil Writ Petition No. 10633 of 1988, Narinder Nath Sharma v. State of Punjab and Anr., decided on August, 27, 1992, reported as 1993(2) R.S.J. 173 and (2) Civil Writ Petition No. 1185 of 1993, Baldev Singh and Anr. v. State of Punjab and Ors., decided on January 27, 1994. Definition of "Military Service" as

given under Rule 2 of the Rules reads as under:-

"For the purpose of these Rules, the expression "military service" means the service rendered by a person, who had been enrolled or commissioned during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution of India on 26th October, 1962, in any of the three wings of the Indian Armed Forces (including the service as Warrant Officer) during the period of said emergency or such other service as may hereafter be declared as military service for the purpose of these rules. Any period of military training followed by military service shall be reckoned as military service." While referring to this definition in Narinder Nath Sharma's case, the Bench observed as under:-

"Rules 2 of the aforesaid 1965 Rules defines the expression "Military Service" as . service 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, and it shall count for the grant of benefit under these rules."

It is, prima facie, apparent that the true scope of the definition of "Military Service" was not taken into consideration while making the aforesaid observation in the judgment. In Baldev Singh's case referred to above simply reliance was placed on the aforesaid judgment in Narinder Nath Sharma's case, while referring to the Haryana Rules regarding military service, which are different. The only observation made with respect to the Punjab Rules is as under:-

"The State of Punjab has defended its action of denying the benefit of military service only on the ground that under the executive instructions the benefit is allowed only to those Government employees who had joined the military service after proclamation of National Emergency, which is impermissible.

The aforesaid observations are divorced of the term "Military Service" as defined in the Punjab Rules aforesaid. It is in this view of the matter that it is considered appropriate that for authoritative decision of the matter, a larger Bench be constituted. Let the papers of the case be put up before the Hon"ble Chief Justice for constitution of a larger Bench."

6. In order to appreciate the rival contentions raised by the learned counsel appearing for the parties before us and for their better understanding it will be appropriate to refer to Rule 2 of the Punjab Government National Emergency (Concessions) Rules, 1965, which reads as under :-

"2. Definition - For the purposes of these rules, the expressions "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 of India 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."

Based on this rule the contention of the learned counsel for the petitioners is that all the four petitioners are entitled to the benefits of these Rules, and in any case the military service rendered by them during the emergency period has to be computed for the purposes of seniority, increments etc. under these Rules. According to the petitioners they have served in both the periods of emergency in the country. When these Rules of 1965 were enacted by the Legislature, Punjab was one State and the State of Haryana had not been bifurcated. After the creation of State of Haryana, the same Rules were made applicable to it. Consequently, the persons who had served during the emergency periods irrespective of the fact whether they had joined any of the three wings of the armed forces either prior or during the emergency, claimed benefit of the afore-stated Rules. The definition of Rule 2 of the Punjab & Haryana Rules was identical and mostly all the petitioners who approached the Court were given benefit and the petitions were decided in their favour directing the respondents therein to grant various benefits to those petitioners in accordance with Rules. The State of Haryana vide notification dated 5.11.1976 inserted proviso to Rule 4 of the Rules. The proviso was introduced to deprive the persons who were released from military service on compassionate grounds, as not entitled to the benefit of concessions under those Rules. Rule 2 was also amended by the State of Haryana vide notification dated 9.8.1976. These amendments were retrospective in nature and according to the State were based on the principle of intelligible differentia. Hon^{ble} Supreme Court of India in the case of Raj Pal Sharma and Ors. v. State of Haryana and Ors., 1985 (Supp) Supreme Court Cases 72 held as under:-

"In this view of the legal position the petitioners herein are also entitled to the benefits of Rule 4 and the mere fact that they were released from military service on compassionate grounds cannot disentitle them as they satisfy the requirement of Rule of the Punjab Rules as it originally stood. The grounds on which they were released are not material. If once they are held to be ex-military servicemen they are entitled to the benefits of Rule 4.

The earlier two amendments, viz. the first and the second amendments brought in 1976 have already been held to be bad and ultra vires the Constitution in K.C. Arora case and the principles laid down in that decision are equally applicable to the amendment whereby proviso to Rule 4 in the view that we have taken cannot disentitle the petitioners to get the benefit of Rule 4.

For the reasons given in K.C. Arora case the writ petitions must succeed. They are accordingly allowed and a writ in the nature of mandamus is issued directing respondents 1 and 2 to confer the benefits of Ex-military/air force service to the petitioners within a period of six months from the date of this judgment. There is, however, no order as to costs."

7. As noticed above, the retrospective effect of Rule 2 was found to be violative of Articles 14 and 16 of the Constitution of India by the Hon''ble Supreme Court, but its prospective basis and effect came up for discussion before the Hon''ble Supreme Court in the case of Dhan Singh and Ors. v. State of Haryana and Ors. 1991(1) S.L.R.200. The amended Clause (2) of the Haryana Rules as notified vide notification No. GSR 182/Const/Art. 309/Amend(2)/76 dated 9.8.1976 reads as under:-

"2. Definition - For the purpose of these rules the expression "military service" means the service rendered by a person, who had been enrolled or commissioned during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution of India on October 26, 1962 in any of the three wings of the Indian Armed Forces (including the service as Warrant Officer) during the period of the said emergency or such other service as may hereafter be declared as military service for the purpose of these rules. Any period of military training followed by military service shall also be reckoned as military service."

On the basis of this amended clause the Supreme Court while noticing the afore-stated judgments in the case of Raj Pal Sharma (supra) held that the amendment of this Rule 2 in its prospectivity and as amended by the notification of August, 1976 was not violative of Article 14 of the Constitution of India. While observing this the Court specifically held that the petitioners were still entitled to the benefit for the service rendered during emergency, may be they were not entitled to the benefit of total length of service rendered in Army by them. The following observations of the Court are relevant:

"The petitioners cannot, therefore, challenge the rule as discriminatory or arbitrary. Such of those appellants and the petitioners who have joined the army before the proclamation of the emergency are not, therefore, entitled to the benefit of military service as per the Emergency Concessions Rules."

"The petitioner in Writ Petition No. 959 of 1989 is not entitled to any further relief as is concluded by the earlier decision of this Court in Ex. Capt. Randhir Singh Dhull v. S.D. Bhambri and Ors. (1981)3 SCC 55 and the clarification in M. Asghar Vs. Union of India (UOI) and Others, that it is only the service rendered during the period of emergency that could be taken into account and not any other period. In disposing of the review petition, Chinnappa Reddy, J. observed as under:-

"Thought the judgment in K.C. Arora's case appears to proceed as if the change was brought about in 1976 even in regard to the length of military service to be taken into account, that question was not actually decided. On the other hand, in R.S. Dhull v. S.D. Bhambri (1981)3 SCC 55, referring to Rule 2, it was expressly stated by this Court that the concession in regard to seniority was admissible in respect of the military service rendered during the operation of the emergency only and not for any military service after the termination of the

emergency..... is, therefore, clear that military service rendered subsequent to the lifting of emergency cannot be taken into account for the purpose of reckoning the seniority in the civil post."

The service of the petitioner after the lifting of the emergency could not, therefore, count for determining his seniority and whatever benefits he is entitled to have been granted earlier."

8. In certain other cases where various Benches of this Court had granted relief to the petitioners against the State of Haryana, it preferred special leave petitions before the Hon"ble Court of India, amongst others, in the case of State of Haryana and Anr. v. Amrik Singh and Anr., State of Haryana and Ors. v. Inderjit Singh All the special leave petitions were disposed of in favour of the petitioners by order dated 30.1.1991 passed by the Hon"ble Supreme Court of India in the above cases being Civil Appeals No. 2658 of 1977 and 1073 of 1977. The order of Supreme Court reads as under:-

"Civil Appeal Nos. 2658-59 of 1977

In view of the decision in Raj Pal Sharma and Others Vs. State of Haryana and Others, and Dhan Singh and others Vs. State of Haryana and others, , these cases are covered against the appellants and hence these appeals are dismissed without any order as to costs.

Civil Appeal No. 1073 of 1977

Heard learned counsel for the parties. The decision in Dhan Singh and others Vs. State of Haryana and others, relied on by the learned counsel for the appellants having been distinguishable on facts, the respondent's case having been under the old definition of "military service", this appeal fails and is dismissed with costs quantified at Rs. 2,000/- (Rupees two thousand)."

9. Thus it is demonstrably clear from the above decisions of Supreme Court of India that all petitioners under the unamended Rule of Haryana were held entitled to the benefit of these rules. Even in the case of Dhan Singh (supra) the Court held that the petitioners were entitled to the relief though limited to the period of service actually rendered during emergency.

10. Unlike the State of Haryana, the State of Punjab did not amend its Rule 2 of the Rules nor added proviso to the Rule 4 as has been done by the State of Haryana. The expression "military services" as defined in the Punjab Rules has a noticeable difference from the expression and definition of Rule 2 as incorporated by amendment by the State of Haryana. Rule 2 of the Punjab Rules, for the purposes of proper understanding, can be bifurcated under two parts (a) point of time of enrollment of the person in the Indian Armed Forces and (b) the service rendered by such person. Thus military service would mean, on a plain reading of the Rule (1), enrolled or commissioned service in any of the three wings of the Indian Armed Forces including service as a Warrant Officer; (ii) service rendered by the person during the period of operation of the proclamation of emergency

made by the President of India or (iii) such other service for the purposes of those rules. This clearly means that the person could be enrolled or commissioned at any time in the three wings of the Indian Armed Forces and the service would be one which a person so enrolled or commissioned, has rendered during the period of emergency alone. The intention of the rule-making authorities to give it a wide meaning and a language of the Rule to include the period of training as a part of the military service and also by declaring that any other service which the authorities feel appropriate could also included as the military service.

11. The expressions in the latter part of Rule 2 must be read ejusdem generis to the earlier part of the Rule. Both these expressions in the Rule must be construed harmoniously so as to give a meaning to the rule which would be in consonance with the legislative intent rather than the one which would defeat the very purpose of the Rules. The distinction between the persons who formed two distinct classes, i.e. those who joined the Army during emergency and those who joined Army prior thereto, would be a permissible differentiation entitling them to the benefit of different set of Rules for the larger or the smaller benefit. It could be said that the persons who joined the Army Service during emergency would be entitled to the benefit of service i.e. the entire service while the persons like petitioners who opted for Army as a career would be entitled to the benefit of the emergency period alone within the limited scope of the aforesaid Rules.

12. The amendment of Haryana Rules clearly shows that the same has changed the very impact and meaning of the Rule by incorporating the expression service rendered by a person who had been enrolled or commissioned during the period of operation of the proclamation or emergency", which expression is conspicuous by its absence in the Punjab Rules. If the Rules after making authorities intended to amend the Rules after the pronouncement by the Highest Court of the land, as was done by the State of Haryana, it was the choice of the State and the action laid entirely in the filed of legislation. Once the Rule is on the statute book, as it stands, it must be given its logical meaning to achieve the end and object which it sought to achieve.

13. The learned counsel appearing for the State placed heavy reliance on the case of Dhan Singh (supra) to argue that it was a permissible differentiation between two different classes. After the pronouncement in Dhan Singh's case there can be no dispute to this proposition, but Dhan Singh's case, as already noticed dealt with the amended Rule 2 of the State of Haryana and not with the Rule as it stood earlier in the State of Haryana and is in Punjab presently even.

14. In the case of Ram Janam Singh Vs. State of Uttar Pradesh and another, Hon"ble Supreme Court of India reiterated the principles enunciated in the case of Dhan Singh (supra) and held that the officers who joined during the emergency period, when the country was facing foreign aggression, could constitute a valid class in themselves. As such this proposition of law cannot be disputed.

15. It may be appropriate here to refer to the instructions issued by the State Government of Punjab vide Annexure P-7. There is no material before us to indicate that the understanding of the Rule as reflected by the State in the said order suffers from any infirmity or was an erroneous approach on the part of the State. It specifically directed that all such cases where military service benefit was denied to the ex-servicemen re-employed in civil on the ground that they had joined military service prior to the proclamation of emergency should be given the benefit in terms of the judgment and as directed in the instructions.

16. We must consider the rules which were in force at the relevant time. The Punjab Government National Emergency (Concession) Rules, 1965 were the relevant rules which defined the military service as indicated above and Rule 4 of these rules provided that the period of military service shall be counted for increment, seniority and pension in accordance with the manner prescribed in those Rules. The expression "military service" has to be construed in terms of the definition found in Rule 2. It will be only such military service which is covered under Rule 2 which will entitle the person for any benefit for the service rendered. The Rule clearly indicates that military service will be only services which have been rendered by such officer/official during proclamation of emergency period and not the other service rendered by them in any of the armed forces of the country. After both foreign aggressions when emergency was declared in the country, the Punjab Government had framed the rules being the Punjab Demobilized Armed Force Personnel (Reservation of Vacancies in Punjab State Non-Technical Services) Rules, 1977. In the present case we are not concerned with the said Rules. Firstly no relief has been claimed by the petitioners on the basis of these Rules and in any case they would not be entitled to any relief for computing their entire service rendered in the military or any of the armed forces in view of the recent pronouncement in the case of Chittaranjan Singh Cheema and Anr. v. State of Punjab and Ors. 1997(2) RSJ 159.

17. The relief claimed by the petitioners in this writ petition itself is a limited one. The petitioners have not claimed that they are entitled to get benefit under the afore-stated Rules for the entire period of service rendered by them in Military, but only to the extent of the military service rendered during the emergency period. In view of the judgment in Chittaranjan Singh Cheema's case (supra) we do not even consider it necessary to embark upon this discussion as this question does not arise squarely or incidentally in the present case. The object of these Rules is to grant benefit to the members of the Armed Forces for their service rendered during the period when emergency was proclaimed by the President of India under Article 352 of Constitution of India. It has been settled that the persons who joined the Armed Forces during the period of emergency itself could validly form a class than from the persons who had joined and opted Army as a career. Such classification is based upon an intelligible differential. One of such classes may be entitled to a limited benefit while the other may be entitled to a larger benefit within the purview and scope of the various rules framed by the State Government and Legislature. Some rules were enacted to give benefit at

the point of entry into civil service while others were to give benefit in increments, seniority, pension and still some others to provide reservations in the non-technical service of the State. The expression "military service" as defined in Rule 2 of the above Rules restricts period for which the benefit can be granted to the service rendered during the emergency. The endeavour of the Court has to be to read the Rules in their plain language and give their intended meaning as postulated by the Legislature. To subtract or add words to the rules and give a meaning different from the one intended, would be reading the rule in a manner which is against the well accepted principles of interpretation of statute. The doctrine of "the golden rule of construction" would be applicable to the interpretation of the Rules of the present kind which are intended to give benefit to a class of persons. In particular reference can be made to the following paragraph from the book of Justice K.P. Singh titled "Interpretation of Statutes" :-

"For a modern statement of the rule one may refer to the speech of Lord Simon of Glaisdale in a recent case where he said, "Parliament is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply "the golden rule" of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further."

Rule 2 admits of no ambiguity and its plain reading indicates the commonwealth intended by the Legislature which the Rule seeks to achieve. To us it appears that the reading of Rule 2 and Rule 4 of the Punjab Rules cannot be interpreted or placed at par in its meaning and scope with that of the amended Rule of the State of Haryana. The unamended Rule of the Haryana State cannot be equated to the present Rule of Punjab in its interpretation and meaning. Any change effected by the Legislature cannot be treated as meaningless. On the other hand every amendment of a rule must logically lead to its purpose. Reading and interpretation of the Punjab Rules in the manner of the amended Haryana Rules would not be in consonance with the settled principles governing the Interpretation of Statutes. The State of Haryana amended the Rules obviously to change the scope of application of the unamended Rules and to restrict its scope in regard to the definition of the military service. It clarified that benefit will be available only to the persons who joined the Armed Forces and served during the period of emergency.

19. The concept of progressive law is one of the accepted cannons of such interpretation of rules primarily for the reason that the law is mutable. Its understanding, while in consonance with the spirit of the language, must adhere to and follow the ? line that would help and lead us to achieve the object. To

improvise for such an exclusion is not indicated in the rules which must operate in its wider sphere without any inure to the persons who served the country with great zeal and responsibility during the period of declaration of emergency. To circumvent a perverse impact of the rules would amount to depriving the persons, who may be entitled to such benefits in the real legislative intent of rules.

20. Reverting to the facts of the present case in particular, there were two periods of national emergency proclaimed by the President of India, in the country under Article 352 of the Constitution of India, i.e. the first emergency period was from 26.10.1962 to 10.1.1968, while the other was from 3.12.1971 to 3.7.1977. Petitioner No. 1 had joined the service on 20.1.1966 i.e. after declaration of the first emergency and continued to serve even till October, 1973, part for the second emergency as well. While other petitioners had joined the Army prior to proclamation of first emergency and served the military during first emergency and were discharged from the Army. They had subsequently joined the Education Department of Government of Punjab on ad-hoc basis where they were subsequently regularised. The cumulative effect of Rules 2 and 4 of the Rules and the Government instructions issued from time to time and lastly Annexure P/7 to the writ petition, demonstrably support the view that the Government policy was to give benefit to such person, though for a limited period. The rights of the petitioners accrued before coming into force of 1976 Haryana Rules and 1977 Rules in Punjab, and as such, accrued benefits cannot be taken away by reading the provisions of the Rules and the instructions issued by the Government in the retrograde. The different rules framed by the State of Punjab intended to give various benefits to various categories of persons who were members of the armed forces for different purpose and with distinct object. All these rules stood repealed by common enactment of the rules framed by the State of Punjab in the year 1982. Thus, with effect from 1982, but prior thereto the members of the Force would be entitled to the benefits in accordance with the rules in force at that time and the law laid down by the Courts. The Government of Punjab in exercising the powers conferred by the provisions of Articles 309 read with Articles 234 and 318 framed the Rules called the Punjab Recruitment of Ex-Servicemen Rules, 1982. These rules repealed all the four rules i.e. The Punjab Government National Emergency (Concession) Rules, 1965; The Demobilized. Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968; The Demobilized Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Services) (Executive Branch) Rules, 1972; and The Released Indian Armed Forces Personnel (Determination of Eligibility for Promotion) Rules, 1977. But while repealing, the Legislature has taken care to protect the rights which had accrued to them under the previous rules. Rule 9(3) of the Punjab Recruitment of Ex-Servicemen Rules, 1982 reads as under:-

"9(3)--Nothing in these rules shall be construed as depriving any person to whom these rules apply or any right which had accrued to him under the rules,

notifications, or orders in force immediately before the commencement of these rules."

In a very recent case, a Division Bench of this Court in the case of Punjab State Electricity Board and Anr. v. Gian Singh, L.P.A. No. 159 of 1997, decided on 16.5.1997, held as under:-

"Consequently, it is apparent that whenever the rule making authority wanted to confer the benefit only on those persons who had joined during the emergency, it had so provided. The rule applicable in the office of the appellant-Board is different from that in force in the State of Haryana. Consequently, learned Single Judge has rightly held that the writ-petitioners were entitled to the benefit of military service rendered by them during the operation of the proclamation of emergency. The writ petitions have been rightly allowed."

21. In view of our above discussion, facts and circumstances of the present case, and in view of the subsequent pronouncements of the Supreme Court we are of the view that the law laid down in Narinder Nath Sharma v. State of Punjab was not correct law in so far as it directed that petitioners in that case were entitled to the benefit of entire period of military service and in not limiting the claim of the petitioners as afore-stated, as indicated by us above. The writ petition itself was directed to be listed before the Full Bench for disposal as per the order of reference dated 29.4.1994 passed by the Division Bench. Consequently, we proceed to dispose of the writ petition itself. In our considered view the petitioners are entitled to the benefit of Rule 4 limited to the extent of increments as all the petitioners have already retired. Each of the petitioners is entitled to the increments in accordance with Rules for the period of the service rendered by them during the proclamation of emergency in the country. The respondents are directed to compute the benefits in accordance with the above observations for the purposes of adding the increment which the petitioners would have been entitled to and for consequential benefits in terms of pension, if granted on such increment affects their pension. However on the facts and in the circumstances of the case we leave the parties to bear their own costs.