
(2006) 05 P&H CK 0145
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7052 of 2006

Man Singh Sehwat

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 352

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

Citation : (2006) 143 PLR 505

Hon'ble Judges : M.M.S. Bedi, J;M.M. Kumar, J

Bench : Division Bench

Advocate : Jagat Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of certiorari quashing, order dated 10.2.2006 (P-6), passed by the Director General of Police, Haryana - respondent No. 2, rejecting the representation of the petitioner for considering his military service from 3.12.1971 to 3.7.1977 during the period of national emergency, towards grant of benefits in civil service i.e. for the purposes of promotion, seniority and increments etc. It has further been prayed that direction be issued to count the aforementioned service for the purposes of promotion, seniority and increments.

2. Brief facts of the case are that the petitioner was enrolled in the Indian Navy on 17.1.1968 and remained in service up to 17.1.1978 (7.1. 1978?). He was discharged from the Indian Navy on 17.1.1978, vide order of the instant date (P-2). According to the discharge certificate, the petitioner has been granted no objection to his taking up civil appointment on or after 8.1.1978. On 6.9.1979, the petitioner joined as Assistant Sub Inspector in the respondent department against the reserved post of Ex-Servicemen and is serving the respondent department. He has earned various promotions and now is posted as Deputy Superintendent of Police at Rohtak. On 6.1.2006, the petitioner submitted a

representation to the respondents for grant of benefit of military service rendered by him in pursuance to the Punjab Government National Emergency (Concession) Rules, 1965 (for brevity, "Emergency Rules 1965"), for reckoning the service rendered by him from 3.12.1971 to 3.7.1977 (P-5). The aforementioned representation has been rejected by the respondents by holding that the claim of the petitioner for benefits of Second Emergency Service has been considered and no such benefits have been extended to the employees of the Haryana Government and, therefore, the representation made by the petitioner has been rejected.

3. Mr. Jagat Singh, learned Counsel for the petitioner has placed reliance on the Emergency Rules 1965 as amended, by the respondent State on 22.1.2005 (P-4) and argued that the same benefit of second emergency to the employees of the State of Punjab has been made available to the Ex-servicemen working on the civil posts in the respondent State. Therefore, he has claimed that the period of military service from 3.12.1971 to 3.7.1977 deserved to be counted on the civil post held by the petitioner in the Police Department, for the purposes of promotion, seniority and increments. According to the learned Counsel the rejection of the representation on 10.2.2006 (P-6) runs counter to the Emergency Rules 1965 and, thus, the order is liable to be set aside. In support of his submission, learned Counsel has placed reliance on two judgments of this Court in the cases of *Narinder Nath Sharma v. State of Punjab* and *Anr.* 1993 (2) R.S.J. 173 and *Balbir Singh v. State of Punjab* 1998 (2) R.S.J. 124.

4. We have thoughtfully considered the submissions made by the learned Counsel for the petitioner and are of the view that the writ petition is devoid of any merit. The State of Punjab framed the Emergency Rules 1965 whereby a person who has been enrolled or Commissioned in any of the three wings of the Indian Armed Forces during the period of proclamation of emergency i.e. from 26.10.1962 to 10.1.1968, was entitled to counting of period of military service for the purposes of increments, seniority and promotion on a civil post after having been discharged from the Armed Forces. The period of military service in respect of second emergency could also be counted for the service benefit on a civil post in the State of Punjab, as has been laid down by a Full Bench of this Court in *Jang Singh v. State of Punjab* 1997 (5) S.L.R. 308. The expression "military service" was amended by the State of Haryana by amending Rule 2 of the Emergency Rules 1965, which incorporate its definition, vide notification No. GSR-182/ Const/Article 309/ Amend(2)/76, dated 9.8.1976 and the same 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.

5. A perusal of the aforementioned definition of military service would show that only those members of the armed forces were to be entitled to the benefits of service rendered in armed forces who had been enrolled or commissioned during the period of operation of proclamation of emergency made by the President under Article 352 of the Constitution. The definition of military service incorporated by the State of Punjab in Emergency Rules 1965 was entirely different and did not confine the benefit only to those who were enrolled or commissioned during the operation of emergency. However, when the matter came up for consideration before the Hon''ble Supreme Court in the case of Dhan Singh v. State of Haryana 1991 (1) S.L.R. 200, it was held that on the basis of the amendment that those who preferred the army service as a career, would not be entitled to the benefit of service rendered in armed forces as compared to those who have been enrolled and commissioned during the period of emergency. In other words, those who had joined the Indian Armed Forces on the call of the Nation on account of emergency, were alone held entitled to those benefits. A Full Bench of this Court in the case of Jang Singh (supra) after considering the Division Bench judgment in the case of Narinder Nath Sharma (supra), has followed the aforementioned principle as has been laid down in Dhan Singh's case (supra).

6. When the facts of the present case are examined in the light of the law laid down by the Hon''ble Supreme Court in Dhan Singh's case (supra), it becomes evident that the petitioner has not joined the Navy after the proclamation of emergency. It is the case of the petitioner that he was enrolled in the Indian Navy on 17.1.1968 whereas the first emergency was in operation from 26.10.1962 to 10.1.1968. He was discharged on 7.1.1978. A proclamation of emergency for the second time was issued on 3.12.1971, which remained in force till 3.7.1977. According to the judgment of the Supreme Court in Dhan Singh's case, the petitioner would not be entitled to the benefit of military service rendered during the emergency because he has not joined armed force on the call of the Nation to combat emergent situation. It appears that the petitioner has joined the Navy by choosing it as a career when in fact emergency was over on 10.1.1968. Therefore, no benefit of military service rendered by the petitioner could be given to him for counting the same for increment, promotion and seniority in the civil post.

7. We are further of the view that the amendment made on 22.1.2005, does not change the situation to the advantage of the petitioner because the basic definition of the expression "military service" as per the rules applicable to the State of Haryana continues to be the same. Therefore, the matter is covered against the petitioner by the judgment of the Hon''ble Supreme Court in Dhan Singh's case (supra).

8. For the reasons aforementioned, this petition fails and the same is dismissed.