
(2011) 11 SHI CK 0288
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9143 of 2008

Pritam Singh

APPELLANT

Vs

State of H.P. and others

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Citation : (2011) 11 SHI CK 0288

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The petition has been filed on the following substantive prayers vide para 7(i) and (ii):

7(i) That the rejection order dated 27.11.2001/5.3.2002 vide Annexure A-9, may kindly be quashed and set-aside.

(ii) That the respondents may be directed to give the benefit of the approved military service rendered by the applicant w.e.f. 10.1.1963 to 5.5.1982 for the purpose of pay-fixation and seniority, on re-employment, till today along with arrears with interest@ 18% per annum forthwith.

2. In reply, the respondents have taken the following stand vide para 3:

3. That the present original application is not maintainable as the applicant joined Army on 04.03.1961 and was discharged on 05.05.1982. After discharging from Army the appointment to the applicant was given against the reserved vacancy of Ex-servicemen. Since the applicant had joined Army before 01.11.1962, therefore, in view of Demobilization Armed Forces Personnel (Reservation of Vacancies in Himachal Pradesh State Non-Technical Service Rules 1972) the applicant is not entitled for the benefits of approved Military service rendered by him in the Army. The relevant provisions provided in the Rules which are given in Appendix 18 page 729 Rule 18.3.2 page 729 of the Handbook of

Personnel Matter Vol. II 2nd Edition of the Demobilization Rules, 1972 are as under:

Under the Technical as also Non-Technical Services Rules in case-ex-servicemen, who joined Armed Forces after 01.11.1962 are not available, ex-servicemen, who joined the Armed Forces, before 01.11.1962 can be recruited to fill the reserved vacancy. However, it is made clear that this benefit is a concession only to deal with the situation where a vacancy reserved for ex-servicemen (i.e. those who joined the Armed Forces after 01.11.1962) remains unfilled for want of candidates. It may be noted that the ex-servicemen who joined Armed Forces before 01.11.1962 are not entitled to the benefit of seniority and pay fixation under these Rules.

Therefore, in view of this provision the applicant is not at all entitled for the benefit of seniority and pay fixation hence, his case has rightly been rejected.

3. Rejoinder refuting the above stand on behalf of the respondents and reiterating the averments setup in the petition has been filed.

4. Some undisputed facts may be noticed first. The petitioner had served the Indian Army as a "Boy" from 04.03.1961 to 09.01.1963, when he was enrolled as a "Sepoy" w.e.f. 10.01.1963 and had served as such up to 05.05.1982. On retirement from the Indian Army, he was re-employed in the respondent-department as Physical Education Teacher (PET) on 31.05.1989.

5. The controversy between the parties revolves around whether the petitioner had joined Indian Army on or after 01.11.1962 or earlier thereto so as to entitle him for the benefit of Demobilized Armed Forces Personnel (Reservation of vacancies in H.P. State Non-Technical Services) Rules, 1972 (in short "the Demobilized Rules"). Whereas the case of the petitioner is that the service rendered by him in the Army w.e.f. 04.03.1961 to 09.01.1963 as a "Boy" cannot be counted towards his status as an "ex-serviceman" within the meaning of Para 18.3.1 at page 728 of Chapter 18 of the Handbook on Personnel Matters, Vol-I (Second Edition) issued by the Government of Himachal Pradesh, Department of Personnel and instead his status as such, has necessarily to be reckoned w.e.f. 10.01.1963 when he was enrolled as "Sepoy" on the regular establishment of the Indian Army. To the contrary, according to the respondents, the petitioner is not entitled for benefit of the Demobilized Rules as he had joined the Indian Army as a "Boy" prior to 01.11.1962. The petitioner in support of his contention has placed reliance upon judgment of the Hon'ble Punjab and Haryana High Court in Sukhram Pal vs. Union of India and others, 1992 (1) SLR 261, wherein it has been held as under vide relevant portion of para 2:

2....

A perusal of the above provision shows that all service from the date of enrolment/transfer for man's service counts for pension. It is implicit in the rule that the period of service prior to transfer to man's service does not count for

pension. This is further made clear by a perusal of Clauses (i) (ii) reproduced above. These provisions exclude the period of service on a temporary establishment for which a special rate of pay is granted as also the period of service rendered before reaching the age of 17 years. In other words, the period of service as a boy before transfer to man's service is not counted for pension. In view of the above provision, it has been held by the authorities that the petitioner had rendered a total service of 13 years and 42 days only. This view is in conformity with the provision of rule 122. The petitioner had not completed 15 years qualifying service. He is thus not entitled to the grant of pension in view of the provision of Rule 132 which prescribe a minimum qualifying service for earning pension as 15years.

6. It is further submitted on behalf of the petitioner that as per Annexure A-10, filed alongwith the rejoinder the service rendered by one Shri A.K. Somal, as a "Boy" in the Indian Army, was excluded from consideration for the purpose of pension. Thus, in essence, it is the case of the petitioner that for the purpose of grant of benefit of the Demobilized Rules and for all other intents and purposes he is required to be considered as an ex-serviceman w.e.f. 10.01.1963 when he had joined the Indian Army as a regular "Sepoy" and not from the date of joining the said Army as "Boy" on 04.03.1961. According to the petitioner, letter dated 01.09.2001, Annexure A-8, sent by respondent No. 2 to respondent No. 1 also goes to support his contention that he was enrolled in the Army service on 10.01.1963.

7. In view of the facts and circumstances of the case, as enumerated hereinabove, and on an overall view of the matter and particularly the ratio of the aforesaid judgment rendered by the Hon"ble Punjab and Haryana High Court in Sukhram Pal vs. Union of India and others (supra) as also the stand on behalf of respondent No. 2 in letter dated 01.09.2001, Annexure A-8, and the instance quoted by the petitioner by way of Annexure A-10 in a similar case, I am of the view that the contention raised by the petitioner has force.

8. In the result, the petition is allowed and the impugned order of rejection dated 27.11.2001, Annexure A-9, is quashed, with a direction to respondents No. 1 and 2/competent authority to consider within three months from the date of production of copy of this judgment by the petitioner before the said respondents/competent authority, the case of the petitioner for grant of benefit under Demobilized Rules alongwith consequential benefits, if any, on the basis of his status as an "ex-serviceman" w.e.f. 10.01.1963, when he had regularly joined the Establishment of Indian Army as a "Sepoy" and not w.e.f. 04.03.1961, when he was enrolled in the Army only as a "Boy" when he was just over 15 years of age, his date of birth being 10.01.1946, at which age he could not have been expected to act as a regular soldier in the Indian Army by any stretch of imagination. It appears that he was taken as a regular hand in the Army only on 10.01.1963, when he had already completed the age of eligibility for induction as such in service at the age of 17 years.

9. The petition stands disposed of in the above terms, so also pending CMP(s), if any.