

(1992) 10 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3960 of 1990

Rajender Kumar S.I.

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 22-10-1992

Acts Referred:

Constitution of India, 1950 — Article 141

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

Citation : (1992) 102 PLR 754

Hon'ble Judges : V.K. Bali, J;Ashok Bhan, J;A.L. Bahri, J

Bench : Full Bench

Advocate : K.A.K. Bakshi and Deepak Agnihotri, for the Appellant; Jaivir Yadav, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Full Bench was constituted to reconcile the conflict of judicial opinion if any, with regard to availability of benefits of military service under the Punjab Government National Emergency (Concession) Rules 1965. Whereas benefits flowing from the Rules with regard to period commencing from October 20, 1962 upto January 10, 1968 (for brevity of reference called first period of Emergency) as also for the period commencing with effect from December 3, 1971 upto its currency (called second period of Emergency) were accorded to one Amar Singh by a Single Judge of this Court in case titled "Amar Singh v. The Secretary to Punjab Government, Soil Conservation, at Chandigarh 1984(1) S. L. R. 31 and one Indraj Singh in case titled Civil Writ Petition No. 82 of 1974 titled "Indraj Singh v. The State of Haryana etc , C. W. P. 82 of 1984, benefits for the second period of emergency were declined to one Sukhdev Singh by a Division Bench of this Court in case "State of Punjab v. Sukhdev Singh 1990 (7) S. L R. 731." The Division Bench in the aforesaid case while declining the relief for the second period of emergency relied upon decision rendered by the Supreme Court in "Dhan Singh and Ors. v. State of Haryana 1991 (I) S. L. R. 200". The fact that decision rendered by the Single Judge in Indraj Singh's case (supra) was upheld

in Letters Patent Appeal which order, in turn, was upheld by the Supreme Court in SLP filed by the State was, however, not brought to the notice of the Division Bench dealing with Sukhdev Singh's case (supra).

2. The facts of the case need not be given in all its details as the same find mention in the order of reference. Suffice, however, to say that petitioner having been selected in the Indian Air Force, joined the said wing of the Armed Forces on June 21, 1963 and continued to serve upto November 17, 1972. The first emergency was declared on October 26, 1962 which continued upto January 10, 1968. On December 3, 1971, the President of India again proclaimed emergency under Article 352 of the Constitution of India on account of external aggression vide notification No. GSR-1789 published in the Gazette of Government of India dated December 3, 1971. The petitioner was given the benefits of military service in his new assignment after discharge from army but was not given any benefit for the period subsequent to January 1968. The initial stand of the petitioner was that he is entitled to the benefit of entire period of service that he rendered in Air Force i.e. upto the date of his discharge. Later, however, he confined his entitlement for the period commencing with effect from December 3, 1971 upto November 17 1972 i.e. upto the time he remained in Air Force. The benefit of service rendered by the petitioner in Air Force confined to the first period of emergency was granted to him by the respondents whereas such benefit for the second period of emergency was declined.

3. Mr. R. A. Yadav, counsel appearing for the State at the very threshold contends that there is no necessity at all to go into the question de novo as the Supreme Court in Dhan Singh and other's case (supra) has clearly held that benefits of military service are available to only those who are enrolled or commissioned during the period of emergency and not to those who joined before emergency i.e. October 26, 1962, He further contends that Supreme Court in "(Ex) Capt Randhir Singh Dhull v. Shri S. D. Bhambri 1981 (1) S. L. R. 384 has held that military benefit for seniority, promotion and increments is admissible only in respect of military service rendered during the operation of emergency and not for any military service after the termination of emergency. The judgment dealing with the extent and scope of military service as defined under Rule 2 of 1965 Rules are detailed judgments and the conclusions have been arrived at after noticing the rival contentions of the parties. Inasmuch as judgment in Indraj Singh's case (supra) was upheld in appeal by the Letters Patent Bench without expressing any opinion as the appeal preferred by the State was dismissed in limine, as also for the reason that the Supreme Court upheld the orders passed by the Letters Patent Bench by dismissing the appeal of the State in limine without dealing with the matter would not advance the case of the petitioner as the said orders can have no binding precedent nor are law declared under Article 141 of the Constitution of India. The mere fact that the Division Bench of this Court in Sukhdev Singh and another's case did not notice the orders passed by the Division Bench in the Letters Patent Appeal or the orders passed by the Supreme Court would not make any difference, contends

the learned counsel.

4. After hearing the learned counsel for the parties, we find that the points raised by Mr. Yadav have substance. The facts of (Ex) Capt. Randhir Singh Dhull's case (supra) would reveal that he had staked his claim for the benefits in service on account of his having rendered military service from 1963 to 1974. While dealing with the matter, the Supreme Court held that concession of seniority was admissible in respect of military service rendered during the operation of emergency only and not for any military services after the termination of emergency and only if the service in the military is as enrolled or commissioned service in any of the three wings of the Indian Armed Forces. Captain Randir Singh Dhull was held entitled to the benefit of military service that he had rendered during the period of first emergency. In Dhan Singh's case (supra) as well Supreme Court held that only those who were enrolled or commissioned during the emergency, ... and ... , had on account of the call of the nation joined the army at that critical juncture of national emergency to save the motherland by taking a greater risk were entitled to the benefit of military service under the Rules and those who were already in army were not entitled to such benefits. Admittedly, when the second emergency was declared, petitioner was already in service. Therefore, he was not entitled to the benefits of military service that he had rendered during the period of second emergency. In view of the decision rendered in (Ex.) Captain Randhir Singh Dhull's case (supra), a Division Bench of this Court in Sukhdev Singh and another's case (supra) specifically held that ratio of Single Bench decision in Indraj Singh's case (supra) was not a good law. It is not disputed by the learned counsel for the petitioner that a Division Bench dismissed the appeal in Indraj Singh's case (supra) preferred by the State in limine as also that the SLP preferred by the State was dismissed likewise.

5. The decision passed in sub silentio i. e. without any argument or debate on the relevant question cannot be a declaration of law under Article 141 of the Constitution of India nor the same has any binding effect. This was so held by a Division Bench of this Court (consisting of brother A. L. Bahri and myself) in Civil Writ Petition No. 1959 of 1990 in "Ex-Inspector Police Gulab Singh v. State of Punjab, C. W. P. 1959 of 1990 We had reached at the aforesaid conclusion after noticing lucid opinion of Sir Wilfrid Greene, M R. in "Lancaster Motor Company (London) Limitd v. Bremith, Ltd. (1941) 1 K. B. 675 , and two decisions of Apex Court in Municipal Corporation of Delhi Vs. Gurnam Kaur, ". and Supreme Court Employees Welfare Association v. Union of India A. I. R. 1970 S. C. 334".

6. In view of what has been said above, we find that there is no conflict of judicial opinion and in fact the law has been well settled by the Supreme Court in (Ex.) Capt. Randhir Singh Dhull's case (supra). Had it come to our notice at the time of making reference to the Full Bench in appeal preferred by the State in Indraj Singh's case (supra) and the Supreme Court again in appeal preferred against the decision of Letters Patent Bench that the matter had been dismissed in limine and without passing a speaking order, there would have been no

necessity to refer the matter to the Full Bench.

7. In view of what has been said above, we hold that benefits on account of serving in any of the Wings of India Armed Force as have been spelled out in Rule 4 of the Punjab Government National Emergency (Concession) Rules 1965 like increments and seniority are limited to the period of first emergency and not the second emergency which was declared by the President of India on account of external aggression vide notification dated December 3, 1971.

8. In view of the fore-going discussion, the writ petition is held devoid of merit and is accordingly dismissed. There shall, however, be no order as to costs.