
(2013) 09 P&H CK 0530
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 18601 of 1997 (O&M)

Ravi Dutt

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Emergency Concession Rules, 1965 — Rule 4.3
Punjab Civil Services Rules — Rule 5.32

Citation : (2017) 1 RSJ 281 : (2017) 1 SCT 719

Hon'ble Judges : Mahesh Grover, J.

Bench : Single Bench

Advocate : Ms. Meenakshi Verma, Addl. A.G, Haryana, for the Respondents;
Raman B. Garg, Advocate, for the Petitioners

Final Decision : Disposed Off

Judgement

Mahesh Grover, J. (Oral) - Additional reply filed in the Court is permitted to be taken on record.

2. The petitioner has prayed that he be granted pension by counting the relevant periods of service rendered by him with the respondents and with the Army and also prays that benefit of Rule 5.32-B of the Punjab Civil Service Rules be given to him.

3. The petitioner had initially served the Armed Forces w.e.f. 15.3.1963 to 14.3.1970. He had joined the Army during the period of Emergency and therefore one of his claims is that this period of service w.e.f 15.3.1963 to 10.1.1968 be reckoned towards the period of service for the grant of benefit of pension and other retiral benefits.

4. After his discharge from the Army, the petitioner joined the services of the respondent as a driver initially on adhoc basis w.e.f 30.11.1972 to 7.1.1973. After a brief break, he was inducted into service as a regular hand on 3.3.1973. The subsequent claim of the petitioner is that this period of ad hoc service from

30.11.1972 to 7.1.1973 be also counted for the grant of benefit of pension and other retiral benefits.

5. The petitioner absented himself from duty for an inordinately long period and the respondents instead of proceeding against him in departmental proceedings chose to regularise the period of absence by treating it as leave without pay. Annexure R-6 placed on record during the course of proceedings is a testimony to this.

6. The petitioner was retired voluntarily from service vide order dated 10.4.1997 upon an application made by the petitioner himself.

7. The petitioner claims that he ought to have been given the pension and other retiral benefits in view of the voluntary retirement permitted to him as it would presuppose that the petitioner had completed the qualifying service of 20 years. During the subsistence of these proceedings, the petitioner has since expired and the petition is now being prosecuted by his legal representatives.

8. The respondents deny the claim of pension and other retiral benefits by insisting that the petitioner has not completed the qualifying years of service and since he has merely completed 14 years 10 months and 21 days which is way short of 20 years as per the rules prescribed, the petitioner cannot be granted the pension and other retiral benefits.

9. The details of the service rendered by the petitioner and the manner in which it has been considered by the respondents is reflected in Annexure R-1 and the same is reproduced herein below:

5. Date of regular appointment : 03-03-1973

6. Date of voluntary retirement : 30-04-1992

7. Length of service : 19 years 01 month 27 days

8. Period of non-qualifying service: 4 years 3 months six days

9. Net qualifying service :14 years 10 months 21 days

The petitioner now contends that he is entitled to the benefit of the service rendered by him in the Army from 15.3.1963 to 10.1.1968 which is the period of emergency and as per Emergency Concession Rules, 1965, this period has to be commuted for the purposes of granting pension and other retiral benefits.

10. He also prays that the period of service rendered by him from 30.11.1972 to 7.1.1973 on ad hoc basis be construed as the relevant period of service since this service was immediately followed by regular service which he joined in March 1973. He also prays that the benefit of Rule 5.32-B be given to him which is extracted herein below:

"(i) At any time, after a Government employee has completed twenty years qualifying service, he may, by giving notice of not less than three months in

writing to the appointing authority retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reasons therefor. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months."

11. I have considered the matter at some length. There is no denying the fact that the petitioner had served the Army during the period of Emergency. Rule 4.3 sub-clause of the 1965 Rules envisage that the period of Military service mentioned in clause 1 shall count towards pension and other retiral benefits. The Rule is extracted herein below:

"4(iii) Increments, seniority and pension- Period of Military service shall count for increments, seniority and pension as under:-

Pension: The period of military service mentioned in Clause-I shall count towards pension only in the case of appointments of permanent service or post under the Govt. subject to the following conditions:

(1)The person concerned should not have earned a pension under military rules in respect of the military service in question.

(2)The period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension provided such period does not exceed one year. Any period exceeding one year, but not exceeding 3 years may also be allowed to count for pension in exceptional cases under the orders of the Government".

12. The respondents' plea is that no benefit of military service can be given to the petitioner as the intervening gap between the discharge from military service and the time when the petitioner entered civil employment is more than one year and even though the respondents in extraordinary circumstances could have condoned this period of one year and up to 3 years but no order as to this effect having been passed, the petitioner at this stage cannot claim any benefit.

13. This to my mind is not acceptable for the simple reason that the respondents by virtue of Annexure R-17 have already granted the benefit of military service to the petitioner while conferring upon him the benefits of pay etc. Annexure R-17 dated 20.4.1987 has been passed by the respondents treating the period from 15.3.1963 to 10.1.1968 as a relevant period for grant of mandatory benefits. If that be so than it does not lie in the mouth of the respondents today to turn around and say that the benefit of this period cannot be given to the petitioner for the purposes of pension and other retiral benefits.

14. In the opinion of this Court, this period of service amounting to 4 years 9 months and 20 days has to be included in the tabulation of the period of service rendered by the petitioner. Similarly the period of more than one month of service rendered on ad hoc basis from 30.11.1972 to 7.1.1973 which was succeeded by a regular appointment also has to be considered towards commuting the period of qualifying service. If this period of service is counted towards the actual period of service which the respondents are willing to concede in his favour i.e 14 years 10 months and 21 days, then the period of service by including the period of military service and ad hoc service comes to 19 years 8 months and 10 days which is just about three months and 20 days away from the requisite period of 20 years. The Court is now confronted with a question as to whether the benefit under sub clause of Rule 5.32-B has to be given to the petitioner or not. The Rule empowers the respondents to grant an employee the benefit of service up to the maximum period of 5 years to enable him to achieve the qualifying service. Evidently this benefit has not been granted to the petitioner which indeed ought to have been given to him.

15. In view of the above when this benefit is included in the service record of the petitioner then he easily attains the required mark of 20 years which as per rules has to be counted as qualifying service for the grant of pensionary benefits.

16. The Court finds that the plea of the petitioner is worthy of acceptance, more particularly, when the respondents themselves have permitted the petitioner the luxury of voluntary retirement. This Court in *Nishan Singh v. Transport Commissioner, Haryana, Chandigarh and another*, 1993 (1) RSJ 519 has observed as follows:

"6. Further a perusal of clause 3 of the Rule quoted above shows that a person retiring under the provisions of Rule 5.32 B shall be entitled to have "a period not exceeding 5 years" to be added to the qualifying service subject to the overall condition that the total period of service does not exceed 30 years. The petitioner is even entitled to the benefit of the provision contained in Clause 3. Nothing has been pointed out to show as to why the benefit under this provision should not be granted to the petitioner."

Taking into consideration all the factors in totality, this writ petition is accepted and the petitioner is held entitled to the benefit of pension and other retiral benefits which shall be paid to the legal representative of the deceased-petitioner as expeditiously as possible i.e within the period of four months from the date of receipt of certified copy of this order.

Disposed of.