
(2012) 03 SHI CK 0412
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11483 of 2008

Sh. Hakam Ram

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 19, 19(2)
Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-Technical Services) Rules, 1972 — Rule 5

Citation : (2012) 03 SHI CK 0412

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Ranjan Sharma, for the Appellant; Rajesh Mandhotra, D.A.G., for the Respondent

Judgement

Justice Deepak Gupta, J.—The petitioner filed an Original Application before the erstwhile H. P. State Administrative Tribunal. On abolition of the Tribunal, the said Original Application was transferred to this Court in terms of the Himachal Pradesh Administrative Tribunal (Transfer of Decided and Pending Cases and Applications) Act, 2008, and registered as CWP (T) No. 11483 of 2008. The following two points arise for consideration in this petition:

1. Whether the petitioner should have been given an option as to whether he wanted his service rendered in the Army to be taken into consideration for grant of pension after refunding the benefits received on his discharge from the Army in terms of Rule 19 of the CCS (Pension) Rules?

2. Whether the petitioner was entitled to benefit of the Demobilised Armed Forces Personnel (Reservation of Vacancies in H.P. State Non-Technical Services) Rules, 1972, for the purposes of fixation of pay only?

2. The undisputed facts of the case are that the petitioner served in the Indian Army w.e.f. 16.05.1967 to 01.03.1989. On his discharge from the Army, the petitioner was engaged as Surveyor on daily wage basis in August 1989 and

worked as such till 31st December, 2002. It is alleged that right from the year 1990 till 2002, he worked continuously for 240 days each year and he was regularized in service as Surveyor w.e.f. 7th January, 2003. He retired from service on 30th October, 2004.

3. The petitioner's case is that in terms of Rule 19 of the CCS (Pension) Rules, the State should have given him an option after his regularization as to whether he wanted to exercise an option to get pension under the Civil Rules or would prefer to get the benefit for the Army service rendered. He also prays that the service rendered by him in the Army should be taken into consideration for fixing his pay from the stage of his regularization in the service.

4. As far as the first issue is concerned, the same is squarely covered by a judgment delivered by a learned Single Judge of this Court in CWP (T) No. 10333 of 2008, titled Ranjit Chand Katoch versus State of H.P. & another, wherein after considering Rule 19 of the CCS (Pension) Rules, the learned Single Judge held as follows:

"6. What emerges from the plain reading of Rule 19 and the decision taken on 26.2.1988, is that the re-employed Government servant can opt to continue to draw military pension or he can get the previous military service counted as qualifying service. However, he will cease to get pension already drawn and the value received for the commutation or a part of military pension and the amount of retirement gratuity including service gratuity.

7. According to sub-rule (2) (a) of Rule 19, the authority while issuing order of substantive appointment to a civil service or post shall alongwith such order require in writing him to exercise the option within three months of the issuance of such order."

5. No such option was asked from the petitioner in this case and the only ground raised by the respondents is that the appellant (petitioner herein) was neither employed from the Ex-servicemen Cell nor he was employed against the seat/quota reserved for the Ex-servicemen. Both these contentions are without any force, since Rule 19 does not talk about the method of appointment and it is not necessary that the Ex-servicemen should have been appointed against a reserved post.

6. As far as the second issue is concerned, the contention of the State is identical. This issue is also squarely covered by a judgment of a Division Bench of this Court in V.K. Behal and others versus State of H.P. and others, Latest HLJ 2009 (HP) 402, wherein this Court held that even those Ex-servicemen, who had not been employed against a post reserved for Ex-servicemen, but had been appointed against a post meant for general category, were entitled to the benefit of the Demobilized Armed Forces Personnel (Reservation of vacancies in the Himachal Pradesh State Non-Technical Services) Rules, 1972, for the purposes of fixation of pay. The relevant observations of this Court are as follows:

"10. There may exist an intelligible criteria for providing reservation to ex-servicemen. The object is also reasonable i.e. to rehabilitate the ex-servicemen but this object can be achieved by providing reservations to them. Nobody is against such reservation. Their pay can also be protected. The problem arises when there is a conflict between persons from the civil society who have joined service much earlier than the ex-servicemen but then they are placed lower when the ex-servicemen who are given benefit of their past service regardless of the fact whether they have joined during emergency or not.

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16. In view of the above discussion, we re clearly of the view that in case Rule 5 (i) of the Rules has to be upheld, the entire benefit of the same should be made available only to those ex-servicemen who joined the armed forces during the period of emergency. As far as other ex-servicemen are concerned they have joined under the reserved category of ex-servicemen. It is also made clear that in all cases the benefit of past service can only be available from the date when the ex-servicemen acquired the minimum educational qualification. No benefit can be given for the army service rendered prior to the date of attaining such education qualification."

7. It has been urged on behalf of the State that reservation is not available for daily waged service. This argument is without any force in view of the fact that the Department of Personnel, vide its letter dated 16.07.1993, has clearly advised that even the work charge and daily wage posts are to be filled in keeping in view the reservation rules applicable to the Ex-servicemen. In any event, in this case, the benefit is being given on both accounts only from the date of regularization and not on account of daily waged service.

8. In view of the aforesaid clear cut position of law on both the points, the writ petition is allowed. It is directed as follows: 1. That the respondents-State, latest by 30th June, 2012, shall work out the pay due to the petitioner w.e.f. 7th January 2003, the date of his regularization, by giving him the benefit of Demobilized Armed Forces Personnel (Reservation of vacancies in the Himachal Pradesh State Non- Technical Services) Rules, 1972.

2. That the arrears shall be paid to the petitioner latest by 31st August, 2012, failing which the State shall be liable to pay interest @ 9% per annum from the date when the amount fell due till the payment of the amount.

3. That if the petitioner, within two months from today, exercise his option to get his Army service counted for the purpose of pension and refunds the benefit already received by him, then the arrears due and payable on this account shall also be paid by the same date and in case not paid, it shall carry interest @ 9% per annum from the date when the amount fell due till the payment of the amount.

The writ petition is disposed of in the aforesaid terms.

No order as to costs.