
(2013) 09 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12777 of 1998

Sher Singh

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 173 PLR 582

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Judgement

Ajay Tewari, J.—By this petition the petitioner has challenged the order Annexure P-5 whereby he was denied the benefit of military service during emergency. The petitioner joined the Army on 2.6.1962 and was demobilised on 3.3.1967. Thereafter in the year 1968 he was selected as a social studies master. When his claim for grant of the benefits of military service during emergency were not granted he filed CWP No. 17613 of 1996. The said writ petition was on disposed of on 02.04.1994 in the following terms:- Ms. Ritu Bahri stated that the respondents shall reconsider the petitioner's claim in accordance with law and pass a fresh order. In view of the statement given by the counsel for the respondents. Mr. Gupta does not press this petition. It is, accordingly disposed of. However, it is directed that the respondents shall decide the matter afresh within three months from the date of receipt of a copy of this order.

It is pursuant to this that the impugned order was passed stating as follows:--

The petitioner is further not entitled to the benefit of military service even on the basis of Govt. instructions dated 7.10.91 as to Govt. by clarifying the said instructions that the military benefit may not be withdrawn from those Ex. servicemen who joined the State service prior to the amendment of the rules vide Govt. instructions dated 4.8.1976 even if they had joined the military service prior to the emergency period, has tried to protect the right of those persons whom the benefit of military service has already been granted but the position in the case of the petitioners is different because he was never been

allowed the benefit of military service and as such the question of withdrawn from him does not arise. Hence, the instructions dated 7.10.91 does not help the petitioner rather the Govt. instructions dated 19.12.91 are applicable in his case which have further been clarified in the instructions dated 7.10.91 according to which he is not entitled to the benefit of military service.

2. Before proceeding further it would be relevant to reproduce the relevant rules of the Punjab Government National Emergency (Concession Rules), 1965(which were later on adopted by the Haryana Government) which are as under:--

2. Definition:(effective from 31.10.66) For the purpose of these rules, the expression "Military Service" means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including the service as a Warrant Officer) rendered by a person during the period of operation of the proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of Limitary training followed by military service shall also be reckoned as Military service.

3. Vide letter No. GSR-182/Const/Art 309/Amd.(2)/76 dated 4.8.1976 the aforesaid rules were amended and it was clarified as follows:--

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 the 26th October, 1962, in any of the three wings of the Indian Armed Forces(including the service as a 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.

4. Vide letter No. 12/113/89-4GS-II dated 7.10.1991 the aforesaid Rules were further amended and it was clarified as follows:--

..... That the benefit of military service may not be withdrawn from those ex-servicemen who had joined the State Service prior to the amendment of the rules vide Haryana Government Notification No. GSR/Const./Art.302/Amd(2) 176 dated 4th August, 1976 even if they had joined the military service before emergency i.e. 26.10.62. However, the benefit of military service granted to those ex-servicemen who joined army before 26.10.62 and were appointed to State Service after the issue of notification dated 4.8.76 may be withdrawn.

5. Learned counsel has argued that respondent No. 2 has totally misdirected himself in passing the impugned order on the basis of instructions issued in February, 1991 without considering the effect of the October, 1991 instructions. The sum and substance of the instructions of 7.10.1991 was that those ex-servicemen who had joined the State service before 4.8.1976 would not be held

disentitled for the benefits of service during the emergency on the ground that they had joined the army service prior to the declaration of emergency, unlike those who joined after that date. Respondent No. 2 has, however, held that since the petitioner was not granted the benefits till the instructions of 1991 he would not be covered by these beneficial instructions. As per learned counsel actually it was the duty of the respondents to have granted the benefits to the petitioner immediately on his joining Government service in 1968 because the factum of his army service has not been denied at any stage.

6. Learned AAG has sought to defend the order stating that the claim of the petitioner cannot succeed since he had not been granted the benefit till August, 1976.

7. The interpretation of the respondent No. 2 is entirely fallacious. It was the duty of the respondents to give the benefit of army service immediately on his joining the State service in the year 1968 as per the extant rules. By not giving that benefit for 8 years they cannot now turn around and be heard to say that the petitioner cannot be granted the benefits, since the rules have changed.

8. In this view of the matter this petition is allowed. The impugned orders are set aside and the respondents are directed to grant the petitioner the benefit of military service rendered by him during emergency towards his civil service. Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.