
(2000) 10 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8320-CAT of 2000

Union of India

APPELLANT

Vs

Satish Kumar

RESPONDENT

Date of Decision : 03-10-2000

Acts Referred:

Punjab Government National Emergency (Concession) Rules, 1965 — Rule 4, 8

Citation : (2000) 10 P&H CK 0091

Hon'ble Judges : R.S. Mongia, J;K.C. Gupta, J

Bench : Division Bench

Advocate : Mr. C.B. Goel, for the Appellant; Mr. M.K. Tiwari, for the Respondent

Judgement

R.S. Mongia, J.—Respondent No. 1-Satish Kumar was appointed as a Clerk in the office of Inspector General of Police, Union Territory Chandigarh on December 16, 1966. After being confirmed as a Clerk on August 17, 1974, he was promoted as an Assistant on September 4, 1976. One Shri Daya Nand had served in the Army w.e.f. November 11, 1960, to August 17, 1964. He joined as a Clerk on March 8, 1967, in the office of Inspector General of Police, Union Territory Chandigarh. He made a request for the grant of benefit of Military service under the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter called "1965 Rules") as applicable to the Union Territory Chandigarh. On March 19, 1987, Chandigarh Administration had issued a detailed circular clarifying that irrespective of the fact whether an incumbent had joined Army before or during the Emergency he would be entitled to the benefit of Military service rendered during the Emergency towards seniority, increments etc. In the light of the aforesaid decision of the Union Territory Administration, Shri Daya Nand was allowed the benefit of Military service vide order dated May 8, 1989, and was given the notional date of appointment as a Clerk as November 1, 1966 (the date of formation of U.T. Chandigarh) and was also given the deemed date of promotion as an Assistant as September 3, 1976. Copy of the order has been appended as Annexure P-I. Daya Nand filed a petition before the Central

Administrative Tribunal in the year 1989 for directing the Union Territory Government to promote him to the post of Deputy Superintendent as per his seniority. The Central Administrative Tribunal vide order dated November 16, 1989, disposed of the Original Application with a direction to the respondent to consider the case of Daya Nand for promotion to the post of Deputy Superintendent within two months. Daya Nand's case was considered and he was promoted as Deputy Superintendent vide order dated March 30, 1990.

2. Respondent No. 1-Satish Kumar challenged two orders before the Central Administrative Tribunal (i) dated May 8, 1989, copy annexure P-2 granting the benefit of Military service to Shri Daya Nand, and (ii) the order dated March 30, 1990, copy annexure P-4, promoting Shri Daya Nand as Deputy Superintendent. The Central Administrative Tribunal vide its judgment dated November 11, 1992, copy annexure P-5, accepted the petition of Shri Satish Kumar (now respondent) and quashed the aforesaid two orders in favour of Shri Daya Nand. It may be observed here that the order dated May 8, 1989, had been appended as Annexure P-1 and order dated March 30, 1990, as Annexure P-2 with the petition filed by Shri Satish Kumar before the Tribunal. It may further be observed that a matter was also pending before the apex Court as to whether the 1965 Rules ipso facto were applicable to the Union Territory Chandigarh employees, in paras 10, 11 and 13 of the Tribunal's order dated November 11, 1992, it was observed as under :-

"10. Adverting to merits, the challenge to the impugned order dated 30.3.90, Annexure P-2 promoting respondent No. 3 as officiating D.S. (o) may be considered first. The central point to be seen for adjudging the validity or otherwise of the aforesaid order is as to whether respondent No. 3 possessed the prescribed eligibility qualification. The eligibility qualification has been prescribed by rule 8(f)(i) of 1960 rules. Clause (i) lays down 7 years experience as Assistant/ Head Clerk for promotion to the post of Dy. Supdt (O). The expression 7 years experience as Assistant, clearly means and implies that an Assistant should have actually worked for a period of 7 years before he could be said to be eligible for being promoted to the post of D.S. (O). It is not in dispute that respondent No. 3 was actually promoted as Assistant w.e.f. 1.10.85. As on 30th March, 1990, i.e. the date of Annexure P-2 respondent No. 3 had put in only 4 years and 6 months of actual service as Assistant. In other words, he had not completed 7 years experience as Assistant. Respondent No. 3 thus did not possess the eligibility qualification prescribed by the aforesaid provision of 1960 rules on the date he was promoted to the post of D.S. (O).

11. During the course of arguments, learned Counsel for respondent No. 3 was at pains to stress that respondent No. 3 is deemed to have been appointed as Assistant from 3rd Sept. 1976 which is the notional date of his appointment given in Annexure P-1 and that deemed appointment necessarily implies that he had rendered service as assistant from the aforesaid date. In view of the unambiguous and clear language in which rule 8(f)(i) of 1960 rules has been

couched, we are unable to persuade ourselves to the view that respondent No. 3 can be deemed to have 7 years" experience as Assistant on 30.3.90. Since respondent No. 3 did not possess the eligibility qualification for being promoted to the post of Dy. Supdt. (O), the order of his promotion, Annexure P-2 is manifestly unsustainable. The aforesaid order is, therefore, liable to be set aside.

13. In the premises, the impugned orders dated 8th May, 1989 and 30th March, 1990, Annexure P-1 and P-2 respectively are hereby quashed. The order quashing Annexure P-1 is, however, subject to the final decision of the Supreme Court that may be rendered in special leave to Appeal (Civil) Nos. 12116-17/91, which are stated to be sub judice in the Apex Court."

3. As a sequel to the judgment of the Tribunal dated November 11, 1992, the Inspector General of Police. UT Chandigarh, issued an order on November 25, 1992, copy annexure P-6, reverting Daya Nand to the rank of Assistant inasmuch as the order of promotion dated March 30, 1990, had been quashed by the Tribunal. The order dated May 8, 1989, granting the benefit to Shri Daya Nand was also withdrawn subject to the decision of the SLP pending in the apex Court against the judgment of the Punjab and Haryana High Court rendered in LPA No. 1064 of 1983. On December 9, 1994, respondent Satish Kumar was promoted as Deputy Superintendent w.e.f. March 30, 1990, the date Shri Daya Nand was earlier promoted as such. Copy of the same has been appended as Annexure P-7.

4. Shri Daya Nand had challenged the order of the Central Administrative Tribunal dated November 11, 1992, before the Apex Court. The case of Shri Daya Nand was decided along with the SLP which was pending earlier and it was held that the 1965 Rules continued to be applied to the employees of UT Chandigarh after November 1, 1966 till they were changed/modified by the Chandigarh Administration. The decision by the apex Court was rendered on September 12, 1995, and the judgment is now reported in Dhayanand, Mubarak Masih, B.P. Singhand others and U.T. Chandigarh Vs. Union of India and others, Finance Secretary, Union Territory of Chandigarh and others and Natha Singh and others, The concluding portion of the judgment of the apex Court reads as under :-

"It is, therefore, clear that the Punjab Government National Emergency (Concession) Rules, 1965, continued to apply in the Union Territory of Chandigarh even after 1.11.1966 till modified, changed or repudiated by the Union Territory Administration and they continued to apply to the employees appointed in the Union Territory after 1.11.1966 who were eligible for the benefit of those rules. This is so because these rules relate to matters for which the Central Civil Services Rules were not applied to employees in Class II, III & IV posts. The contrary view taken by the Tribunal and the High Court cannot, therefore, be upheld.

Consequently, the appeals and the writ petitions are allowed in this manner. The impugned orders of the High Court and the Tribunal are set aside. The claim of the concerned employees in these matters would now be considered and decided

by the Union Territory Administration in accordance with the rules."

5. Pursuant to the judgment of the apex Court dated September 12, 1995, the Chandigarh Administration issued an order on December 11, 1995, restoring the benefit of Military service to Daya Nand and his seniority was also restored. As a sequel respondent No. 1 Shri Satish Kumar was reverted to the post of Assistant vide order dated December 22, 1995, copy annexure P-10.

6. Respondent No. 1-Satish Kumar challenged the order Annexure P-10 before the Central Administrative Tribunal and sought stay of grant of further promotion to Shri Daya Nand as the Administration was going ahead to promote Shri Daya Nand to the post of Superintendent Grade-I. Initially the stay was granted but later on it was vacated and on vacation of stay order, Shri Daya Nand was promoted to the post of Superintendent Grade-1.

7. The Central Administrative Tribunal vide impugned judgment dated August 10, 1999, copy annexure P-11, accepted the Original Application and held that after the judgment of the apex Court in Daya Nand's case (supra), Daya Nand was not entitled to Military service benefit and, therefore, the order giving him the Military service benefit and ultimately promoting him as Superintendent Grade II w.e.f. March 30, 1990, and reverting the petitioner was illegal. The respondents were directed to consider the case of the petitioner Satish Kumar (now respondent) for promotion w.e.f. the due date.

8. Learned counsel for the petitioner argued that in the earlier judgment of the Central Administrative Tribunal dated November 11, 1992, copy annexure P- 5, which was passed on the Original Application filed by Shri Satish Kumar now respondent against Shri Daya Nand, it was held that the order dated May 8, 1989 (Annexure P-1 in that O.A.) which had granted Military service benefit to Shri Daya Nand and order dated March 30, 1990, copy annexure P-2 in the said O.A. granting promotion to Daya Nand had been quashed. However, on Daya Nand's filing an appeal against the Tribunal's judgment dated November 11, 1992, the Supreme Court allowed the appeal and quashed the judgment of the learned Tribunal vide judgment in Daya Nand's case (supra). In other words, the orders, copies annexures P-1 and P-2 in the O.A. referred to above were revived on the acceptance of appeal of Daya Nand. In these circumstances, if the petitioners have granted the benefit of the judgment of the apex Court to Daya Nand, there could not be any legal objection to the same and, therefore, the Tribunal had gone wrong in upsetting the orders of the petitioner granting benefit of Military service to Shri Daya Nand and promoting him as Superintendent Grade II w.e.f. March 30, 1990. Learned counsel for respondent Satish Kumar, however, submitted that to the extent the Tribunal held that Daya Nand was not entitled to Military service benefit under the 1965 Rules may or may not be correct but assuming it to be not correct and even if it is held that Daya Nand was entitled to Military service benefit, the question still remains as to whether Daya Nand was entitled to be promoted or not to the rank of Superintendent Grade-1. According to the counsel, Daya Nand was not eligible for promotion as Superintendent

Grade It as he lacked requisite experience for the post and it was on this ground that the order Annexure P-1 in the earlier Original Application filed by Satish Kumar which granted promotion to Daya Nand had been quashed. According to the counsel, the judgment of the apex Court did not specifically upset or reverse the quashing of the order Annexure P-1 in Daya Nand's case (supra).

9. After hearing teamed Counsel for the parties, we are of the view that the Tribunal had gone wrong in holding that Daya Nand was not entitled to the Military service benefit. In K.C. Arora's case 1984 S.C.C. (L&S) 520, wherein the amendment made by the Haryana Government to the 1965 Rules redefining the Military service to mean the service rendered by a person in the Armed Forces during the period of Emergency by those persons who had joined Armed Forces during the Emergency. The amendment was brought in the year 1976 with retrospective effect from November 1, 1966. The apex Court while upholding the amendment struck down the application of the same retrospectively. It was held that those persons who had joined civil service in the State of Haryana prior to the amendment in 1976 after being discharged from the Armed Forces would be entitled to the benefit of Military service rendered during the period of Emergency irrespective of the fact whether the person had joined the Armed Forces prior to or during the Emergency. However, if a person had joined civil service in Haryana after the amendment of the rules in 1976 after being discharged from the Armed Forces would get benefit of Military service rendered during the Emergency only if such incumbent had joined during the period of Emergency. There is no such amendment in the State of Punjab or by the Union Territory whereby definition of Military service has been changed. Consequently, irrespective of the fact whether Daya Nand had joined the Armed Forces prior to the Emergency would be entitled to the Military service benefit rendered during the period of Emergency.

10. In the judgment of the apex Court in Daya Nand's case (supra), the apex Court never adverted to the controversy whether Daya Nand had the requisite qualification for promotion on the date of his promotion. No doubt the appeal was accepted but there was no finding given regarding the quashing of annexure P-1 by the Tribunal in the judgment under appeal. Be that as it may, the Tribunal could again go into this fact now whether Daya Nand had the requisite qualifications or not. The requirement of the Rules is that the person should have particular number of years of "experience" as contra-distinction to a particular number of years of "service". By giving Military service benefit towards seniority/increments under the 1965 Rules it cannot be deemed that Daya Nand had the experience of physically working against the post. Recently we have held in a Division Bench judgment in C. W.P. No. 18483 of 1998, Harnesli Kumar v. Punjab State etc., rendered on October 3, 2000, relying on Supreme Court judgments and earlier Division Bench judgments that there is a difference between the expression "experience" and "service". The service rendered by a person may be deemingly taken into account for seniority under the 1965 Rules but the Rules do not envisage that period to be counted towards actual physical experience.

11. For the foregoing reasons we find that no fault can be found with the judgment of the Tribunal on that count. Consequently, the writ petition is partially accepted and the judgment of the Tribunal is quashed only to the extent it says that Daya Nand was not entitled to the Military service benefit. However, qua the other finding that Daya Nand did not have the requisite qualification on the date of his promotion is upheld.

12. Petition partly allowed.