

Before Sham Sunder, J

ASHOK KUMAR,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 16035 of 1993

5th December, 2007

Constitution of India, 1950—Art. 226—Punjab Government National Emergency (Concession) Rules, 1965—RL.4—Claim for benefit of military service—Petitioner after rendering 15 years service in Air Force joined civil service—Petitioner already granted benefit of increments—Claim for grant of seniority and consequential benefits—RL. 4 of 1965 rules grant benefit of military service towards increments, seniority and pension—Order denying benefit of seniority for the period of service rendered by petitioner during proclamation of 1st emergency held to be illegal being in violation of RL.4 of 1965 Rules—Petition allowed, respondents directed to grant the benefit of seniority by counting period of military service rendered by petitioner during proclamation of 1st national emergency.

Held, that the respondents were not correct in denying the benefit of seniority to the petitioner for the period of service rendered by him during the proclamation of 1st National emergency. The order dated 6th June, 2006 denying the benefit of seniority to the petitioner for the period of service rendered by him during the proclamation of 1st emergency is, therefore, illegal being in violation of Rule of the Punjab Government National Emergency (Concession) Rules, 1965.

(Para 6)

Ravi Sharma, Advocate, *for the petitioner.*

S. S. Sahu, A.A.G, Punjab, *for the respondents.*

JUDGMENT

SHAM SUNDER, J.

(1) The petitioner is an ex-serviceman from the Indian Air Force. He was duly selected in the Indian Air Force on 2nd January, 1964. On 31st January, 1979, he was released as Corporal, from the Indian Air Force. Thereafter, the petitioner was duly selected and appointed as Diesel Pump Attendant and joined his duties at Amritsar, under respondent No. 3, on 1st February, 1982, and retired from service on 29th February, 2004. It was stated that as per Rule 4 of the Punjab Government National Emergency (Concession), Rules 1965, the petitioner was required to be granted the benefit with regard to increments, seniority and pension, for the period, he served the Indian Air Force, during the first emergency. Though, the rules, referred to above, cast statutory obligation, on the respondents, to grant the petitioner, the benefit of military service, rendered after 2nd January, 1964 yet his claim for seniority was kept pending after counting only a part of his service, towards increments. When the grievance of the petitioner, was not redressed, he filed the instant Civil Writ Petition, wherein, interim order dated 28th April, 2006, was passed by this Court, that he should make a representation to the respondents. Thereafter, the petitioner made a representation, to the respondents, and the order dated 6th June, 2006, was passed, whereby, he was declined the benefit of seniority, for the period of military service. Thereafter, the writ petition was amended, wherein, the order dated 6th June, 2006, was challenged, as illegal, void, unconstitutional and inoperative against the rights of the petitioner. Accordingly, a prayer was made that a Writ in the nature of mandamus, be issued to the respondents, to grant him the full benefit of his military service, towards increments, seniority, promotion, step-up increments etc. Further prayer for the issuance of a Writ of Certiorari, quashing the order dated 6th June, 2006 (Annexure P-9) was also made.

(2) The respondents, in their written statement, admitted that the petitioner served in the Indian Air Force from 2nd January, 1964 to 31st January, 1979. It was also admitted that he was appointed as Diesel Pump Attendant, and joined, as such, under respondent No. 3. The National emergency was proclaimed in the Country twice i.e. for the first time from 6th October, 1962 to 9th January, 1968, and for the second time, from

3rd December, 1971 to 3rd July, 1977. It was admitted that the petitioner has since retired from service. It was further stated that relying upon **Jang Singh and others versus State of Punjab and others (1)** a Full Bench decision of this Court, the petitioner was granted the benefit in increments, for the military service, for the period of first emergency, from 2nd January, 1964 to 9th January, 1968. It was further stated that, as per the judgment, referred to above, the petitioner was not entitled to the benefit of seniority, for the aforesaid period, and, as such, the same was declined,—*vide* order dated 6th June, 2006. It was further stated that the order dated 6th June, 2006 (Annexure P-9) was legal, valid and operative against the rights of the petitioner. The remaining averments, were denied being wrong.

(3) I have heard learned Counsel for the parties and have gone through the record of the case, carefully.

(4) The Counsel for the petitioner, contended that the petitioner limits his claim only to the extent of grant of seniority, and the consequential benefits, flowing, on account of the fixation thereof. In the order dated 6th June, 2006 (Annexure P-9), it was recorded that the petitioner had already been granted the benefit of military service from 2nd January, 1964 to 9th January, 1968 for increments. He was, however, denied the benefit of seniority,—*vide* this order, on the basis of **Jang Singh's case** (*supra*). It is to be determined, whether the aforesaid period of military service, for the grant of seniority to the petitioner, and the consequential benefits, could be taken into consideration or not. In exercise of the powers, conferred by the Constitution of India, the Governor of Punjab, framed the Rules, called as Punjab Government National Emergency (Concession) Rules, 1965

(5) “Rule 4 of the Rules, is extracted as under :—

“4. Increment, seniority and pension :—

Period of Military service, shall count for increments, seniority and pension as under :—

(i) **Increment.**—The period spent by a person in military service, after attaining the minimum age, prescribed for appointment to any

service or post, to which he is appointed shall court for increments, where no such minimum age is prescribed the minimum age shall be as laid down in rules 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules, Volume II. This concession shall, however, be admissible only on first appointment.

- (ii) **Seniority.**—The period of military service mentioned in Clause (i) shall be taken into consideration for the purpose of determining the seniority of a person, who has rendered military service.”

(6) The principle of law, laid down, in **Jang Singh and others’ case** (*supra*), was to the effect that Rule 2 of the Rules *ibid*, clearly indicates that the military service will be only service, which had been rendered by such officers/officials, during the proclamation of emergency and not any other service, rendered by them. The principle of law, laid down, in the aforesaid authority, was to the effect, that the benefit of increments, seniority, promotion and pension, was to be granted, for the limited period of service, rendered during the proclamation of 1st National emergency. No principle of law, was laid down, in **Jang Singh and others’ case** (*supra*), that an ex-serviceman, who had rendered service, during the proclamation of 1st National emergency, was not entitled to the benefit of seniority. In the peculiar circumstances of that case, the benefit of military service from seniority, was not granted, to the petitioners, as they had already retired for service. In the instant case, the petitioner filed the Writ Petition in 1993, when he was still in service. If, on account of delay, in disposal of the Writ Petition, he retired from service, on 29th February, 2004, he could not be denied the relief, which became legally admissible to him, immediately on joining civil service, after his release from Air Force. When his grievance was not redressed, by the respondents, despite representations, he was forced to file the instant Writ Petition. Under these circumstances, the respondents were not correct, in denying the benefit of seniority, to the petitioner, for the period of service, rendered by him, during the proclamation of 1st National emergency. The order dated 6th June, 2006, denying the benefit of seniority, to the petitioner, for the period of service, rendered by him, during the proclamation of 1st emergency is, therefore, illegal, being in violation of Rule 4 of the Rules *ibid*, and the principle of law, laid down in **Jang Singh and others’ Case** (*supra*).

(7) For the reasons, recorded hereinbefore, the petition is accepted, with no order as to costs, and the order dated 6th June, 2006 (Annexure P-9) is quashed, being illegal. The respondents are directed to grant the benefit of seniority, to the petitioner, by counting the period of military service, rendered by him, from 2nd January, 1964 to 9th January, 1968, during the proclamation of 1st National emergency, within a period of three months, from the date of receipt of a certified copy of the Judgment, and if he is found entitled to any monetary benefit, on account of fixation of such seniority, the same be released to him within a period of two months thereafter.

R.N.R.

Before Mehtab S. Gill & Harbans Lal, JJ

SANJIV BHASIN AND OTHERS,—Appellants

versus

THE STATE OF HARYANA,—Respondents

CrI. Appeal No. 364/DB of 2001

19th April, 2007

Indian Penal Code, 1860—Ss. 302/34, 498-A and 406—Dowry death after about 2 years of marriage—Medical evidence showing death due to hanging and not strangulation—An organophosphorus pesticide also detected in stomach—Witnesses even father and brother of deceased failing to identify handwriting of deceased or their own handwriting—Suicide note showing deceased fed up with ways of life of her husband and she was not in a position to bear a child—No blame on her father-in-law by deceased—Statements of father and brother of deceased both practising Advocates do not inspire confidence—Benefit of doubt given to father-in-law and he is acquitted of charges framed against him—Case against husband does not fall within ambit of S. 302 and he is convicted under section 306 IPC for abetment of suicide and sentence reduced to 10 years while directing to pay a fine of Rs. 1 lac to be paid to father of deceased.