

Before I. S. Tiwana, J.  
AMARJIT SINGH,—Petitioner.

*versus*

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 933 of 1984.

May 8, 1985.

*Demobilized Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968—Rules 1(2), 3 and 5(1)—Rule 5(1)—Scope of—‘first opportunity’ referred to in the Rule—Whether would have reference to an opportunity prior to the enforcement of the Rules—Ex-army officer selected in allied services against a post reserved for Released Armed Forces Personnel—No such appointment made after the enforcement of the Rules—Such Officer—Whether entitled to the benefit of seniority in terms of Rule 5(1).*

Held, that the very opening words of Rule 5(1) of the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968 indicate that this rule governs the seniority of those who have been appointed against the vacancies reserved in terms of Rule 3. A reading of Rules 1(2) and 3(1) together makes it further clear that under the Rules no vacancy could be reserved for the Released Armed Forces Personnel with effect from the date prior to the enforcement of the rules. The date of joining the military service or the training prior to the commission is to be co-related to the first opportunity which the appointee under the Rules could have to enter the service and since the reservation for the Released Armed Forces Personnel was brought in for the first time by these rules, the ‘first opportunity’ essentially would be after the coming into force of these Rules. So the governing factor for the fixation of the assumed date of appointment would be the availability of the first opportunity such an appointee could have. The ‘first opportunity’ as mentioned in Rule 5(1) has to be a real opportunity, the chance of grabbing which by an appointee under the Rules is almost certain. An appointee who seeks the fixation of his seniority under the Rules has to establish that he was not only eligible but was also not in any way handicapped in availing of this first opportunity. The appointee against the reserved vacancy meant for the Released Armed Forces Personnel has to show that such a vacancy was available to him on the date with effect from which he wants his seniority.

(Paras 2 and 4)

*Amended-Petition under Articles 226/227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other suitable writ direction or order be issued:—*

(i) *summoning the complete records of the case;*

- (ii) quashing the orders at annexure 'P-3';
- (iii) directing the respondents to grant the benefit of military service to the petitioner under the Rules and refix his seniority accordingly;
- (iv) the Hon'ble Court may also grant consequential reliefs such as seniority, arrears of salary, promotion with effect from a date persons junior were promoted etc;
- (v) costs of the petition be also awarded;
- (vi) requirement regarding filing of certified copies of the annexures be dispensed with;
- (vii) requirement regarding service of advance notice of writ petition may kindly be dispensed with;
- (viii) it is further prayed that during the pendency of this writ petition, further promotions to the rank of Deputy Excise & Taxation Commissioner may kindly be stayed;
- (ix) any other relief which this Hon'ble Court may deem fit in the circumstances of the case;

CIVIL MISC. No. 1132 OF 1985

*Application under Rule 8, Chapter 4-F(b) of the High Court Rules and Orders Volume V read with Section 151 of the Code of Civil Procedure, praying that permission to file the attached replication may kindly be granted.*

Kuldip Singh, Senior Advocate with Rajiv Atma Ram, Advocate, for the Petitioner.

J. S. Mann, D.A.G., Punjab, for respondent Nos. 1 and 2.

J. L. Gupta, Senior Advocate, with M. K. Tiwari, Advocate, for respondent Nos. 4, 5, 6, and 7.

I. J. Malhotra, Advocate, for respondent No. 9.

JUDGMENT

*I. S. Tiwana, J.*

(1) The petitioner who claims to have valiantly and successfully fought on the borders of the country as a Commissioned Officer, complains of his failure at the Secretariat level in the matter of

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fixation of his seniority as Excise and Taxation Officer, a post which he later joined under the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968 (for short, the Rules). The relevant parts of these rules to which repeated references have been made by the learned counsel for the parties in support of their respective view points, are as follows:—

1. (1) \* \* \* \* \*

(2) These shall be deemed to have come into force with effect from the 1st day of November, 1966.

(3) \* \* \* \* \*

2. \* \* \* \* \*

2. \* \* \* \* \*

(d) 'Released Indian Armed Forces Personnel' means the Indian Armed Forces Personnel who were Commissioned to or who joined the Armed Forces of the Union, as the case may be, on or after the first day of November, 1962, but before the 10th day of January, 1968, and who were released on demobilisation thereafter but does not include:—

\* \* \* \* \* x

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3. (1) Twenty per cent of the non-technical posts to be filled up through direct recruitment shall be reserved for being filled up by the Released Armed Forces Personnel.

(2) \* \* \* \* \*

(3) \* \* \* \* \*

(3) \* \* \* \* \*

(4) Notwithstanding anything contained in these rules, the total number of vacancies reserved for the Released Armed Forces Personnel and the Scheduled Castes, Scheduled Tribes and Backward Classes, in any service, shall not exceed, in any year, 50 per cent of the total number of vacancies to be filled up in that service in that year.

5. (1) Seniority and pay of the candidates who are appointed against the vacancies reserved under rule 3 and who,—

- (i) in the case of Emergency Commissioned Officers, are released according to a phased programme; or
- (ii) in the case of Short Service Commissioned Officers, are released on the expiry of the tenure of their service; or
- (iii) are invalidated owing to a disability attributable to or aggravated by military service;

shall be determined on the assumption that they joined the service or the post, as the case may be, under the State Government at the first opportunity they had after they joined the military service or training prior to the Commission.

3.	*	*	*	*
4.	*	*	*	*

6. The provisions of these Rules shall have effect, notwithstanding anything to the contrary contained in any other rules."

His case in a nut shell is that he joined the Indian Army on April 15, 1963 and after training, was commissioned as an officer on May 3, 1964. He saw active service during the Indo-Pak War in 1965 and won laurels. He was released on February 28, 1970. Later he was selected and appointed as a Lecturer in a Government College against one of the posts reserved under the above noted Rules. He joined as such on July 17, 1971, and in terms of Rule 5(1) referred to above his seniority was fixed with effect from November 12, 1964, taking it to be a deemed date of his appointment. Still later in the year 1972, the Punjab Public Service Commission advertised some posts in the Punjab Civil Service (Executive Cadre) and other allied Services and as a result of his taking the competitive

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examination, he was selected for appointment as an Excise and Taxation Officer against one of the posts reserved for the Released Armed Forces Personnel. He joined this post on July 11, 1974. After joining this post he represented to the Government to grant the benefit of his military service in the matter of fixation of his seniority in the service but it was declined on the ground that he had already availed of this concession when he was appointed as a Lecturer in the Government College. A copy of this order is Annexure P. 2 to the petition. Since this Court in *Shri Raj Kumar Verma, H.C.S. v. The State of Haryana and others* (1), and also in similar other cases had held that the benefit of military service under the Rules cannot be confined to the first civil appointment alone and has to be extended to all subsequent appointments, the petitioner once again represented to the Government to give him the above noted relief. Before his representation, however, could be finally disposed of, he filed Civil Writ Petition No. 2184 of 1983 in this Court seeking a mandamus directing the respondent authorities to grant him seniority in terms of the above noted Rules as also other consequential benefits. In the return filed on behalf of the State, it was pleaded that since the representation of the petitioner was still pending with the Government the petition deserved to be dismissed as pre-mature. Accepting this plea the Motion Bench dismissed that petition with the direction to the authorities concerned to decide the said representation of the petitioner within a period of six months from the date of the judgement, i.e., August 17, 1983. It is as a sequel to this direction that the respondent authorities have passed the presently impugned order dated December 22, 1983 (Annexure P. 3) the operative part of which reads as follows:—

“In accordance with the relevant rules he could claim benefit of his military service only with reference to the first opportunity which became available to him for appointment as Excise and Taxation Officer after 1st November, 1966, the date when these rules were made effective as provided under rule 1(2) of the rules *ibid.* No recruitment of Excise and Taxation Officers was made after 1st November, 1966, other than the one in which he was recruited as Excise and Taxation Officer. Therefore, the question of giving him any deemed date of appointment as Excise and

(1) 1979 (3) S.L.R. 719.

Taxation Officer from an earlier period does not arise. As such the representation dated 20th December, 1979 of Shri A. S. Kaleka has been rejected.

R. P. OJHA,

Financial Commissioner, Taxation and  
Secretary to Government, Punjab,  
Excise and Taxation Department."

As is well indicated by the above quoted order, the primary defence of the official as well as non-official respondents is that the 'first opportunity' as referred to in Rule 5 essentially means the first chance which became available to the petitioner for appointment as Excise and Taxation Officer after November 1, 1966, the date with effect from which the reservation was provided for the Released Armed Forces Personnel and factually there being no recruitment to the vacancy of an Excise and Taxation Officer after November 1, 1966, the petitioner could not claim any assumed date of his appointment as such and, therefore, could not get benefit of Rule 5 of the Rules. To sustain this stand, an additional plea has been taken by some of the private respondents that as a matter of fact the State Government could not make the 1968 Rules operative with effect from a date prior to November 1, 1966, on account of the limitations and restrictions put on the Government by section 82 of the Punjab Reorganisation Act, 1966, (for short, the Act). Proviso to sub-section (6) of this section says that the conditions of service applicable immediately before the appointed day, i.e., 1st day of November, 1966, to the case of any person referred to in sub-sections (1) and (2) of this section, meaning thereby the persons who at that time were serving in connection with the affairs of the existing State of Punjab or the Central Government, shall not be varied to his disadvantage except with the previous approval of the Central Government. Besides this, some other preliminary objections, such as, the petitioner is guilty of laches; the second representation made by him to the Government was not maintainable and the persons likely to be affected had not been impleaded as respondents, were also taken by the respondents but these have either been met by the petitioner by amending his petition and impleading the persons concerned as respondents or have not been pressed by the counsel for the respondents. Thus the fate of the case is dependant on knowing the scope and content of Rule 5(1) referred to above or in other words, can the 'first opportunity' mentioned in this Rule have reference to an op-

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portunity prior to November 1, 1966 when no reservation as a matter of fact did exist in favour of the Released Armed Forces Personnel. Having heard the learned counsel for the parties at some length I find that the impugned order Annexure P. 3 cannot successfully be assailed by the petitioner.

(2) The very opening words of Rule 5(1) indicate that this rule governs the seniority of those who have been appointed against the vacancies reserved in terms of Rule 3. A reading of Rules 1(2) and 3(1) together makes it further clear that under the Rules no vacancy could be reserved for the Released Armed Forces Personnel with effect from a date prior to November 1, 1966. Mr. Gupta, the learned Senior Advocate for some of the respondents, again appears to be right in submitting that the Government while framing the Rules was conscious of the limitations placed on it by proviso to sub-section (6) of section 82 of the Act which lays down in no uncertain terms that conditions of service of persons referred to in this section and who were serving in connection with the affairs of the existing State of Punjab or the Central Government could not be varied or changed to their disadvantage except with the previous approval of the Central Government. The question whether seniority is a condition of service is no more in doubt and stands settled by their Lordships of the Supreme Court in *B. S. Yadav and others v. State of Haryana and other* (2), when they say that "we entertain no doubt that seniority is a condition of service and an important one at that". As a matter of fact Mr. Mann, the learned Deputy Advocate General has produced before me the proceedings of a meeting held on August 16, 1967, to consider the draft of the rules wherefrom it is clear that initially the draft rules proposed to make the rules operative with effect from February 25, 1963, but since a doubt was expressed as to whether the Rules could be made operative with effect from a date prior to the date of reorganisation of the State, i.e., November 1, 1966, it was agreed that "these rules may be made effective from November 1, 1966". This intention was later manifested by Rule 1(2) of the Rules. To my mind, this rule controls the retrospectivity of Rule 5 also. However, Mr. Kuldip Singh, Senior Advocate, for the petitioner urges with some amount of vehemence that all that is to be taken in the light of Rule 1(2) is that Rule 5(1) came into existence for the first time on November 1, 1966 and ac-

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(2) A.I.R. 1981 S.C. 561.

According to him, the language of Rule 5(1) does not restrict the assumed date of appointment of an incumbent under the Rules to November 1, 1966. According to the learned counsel, this assumed date of joining the service or appointment can, in the given facts and circumstances of a case, be much earlier to November 1, 1966. He emphasises that the last words of Rule 5(1) "after they joined the military service or training prior to the Commission" clearly indicate that the only date relevant for determining the assumed date of appointment of a member appointed to the Service under the Rules is the date of his joining the military service or the pre-Commission training and this date can be earlier to November 1, 1966 as in the instant case. To my mind, he is taking these words out of context. This date of joining the military service or the training prior to the Commission, has to be co-related to the first opportunity which an appointee under the Rules could have to enter the Service and since the reservation for the Released Armed Forces Personnel was brought in for the first time by these Rules, the 'first opportunity' essentially would be after the coming into force of these Rules. So the governing factor for the fixation of the assumed date of appointment would be the availability of the first opportunity such an appointee could have.

(3) His further contention that the Government at no stage gave the interpretation or the meaning to these Rules as is sought to be done now, does not impress me at all. He highlights that as a matter of fact in the case of the petitioner too when his seniority as a Lecturer was fixed he was given the assumed date of appointment as November 12, 1964, i.e., much earlier to November 1, 1966. Be that as it may, the novelty of an argument cannot be its infirmity; had it been so, the law would have remained static and stagnant. Merely because the seniority of some of the employees in the Service of the State Government has wrongly been determined under the Rules or was so determined in the case of the petitioner earlier, does not mean that the letter and spirit of the Rules has to be bidden a go-by. As a matter of fact, it has been pointed out in the return of the official respondents that the cases of fixation of seniority of some of its employees to whom a reference has been made in the petition, are either likely to be reviewed or are sub-judice. It is firmly asserted on their behalf and to my mind rightly that the present interpretation of the Rules as made applicable to the case of the petitioner is the only correct view of the Rules. Another set of Rules known as "The Punjab Government National Emergency (Concession) Rules, 1965, conferring similar benefits on the ex-enrolled and commissioned members of the Indian Armed Forces who



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later joined civil service under the State Government from the open market also indirectly support the above noted conclusion of mine. It is the conceded position that these two sets of Rules, i.e., 1968 and 1965, are complementary to each other and exist side by side—the former governing the cases of the public servants who joined civil service under the State Government after their release from the army from the open market or through open competition and the latter dealing with the rights of the civil servants who entered the State service as a result of the reservation made in their favour under the Rules. The 1965 Rules having been brought in earlier to the re-organisation of the State with effect from November, 1966, obviously are not hit by the proviso to sub-section (6) of section 82 of the Act.

(4) The matter can be examined from another angle in the light of the following admitted facts. One Shri J. K. Gupta was directly recruited as Excise and Taxation Officer in the year 1970, against a vacancy of the year 1965. This appointment had been made in response to an advertisement made by the Public Service Commission in the year 1968. Conceded only two posts were advertised by the Commission and one of them was reserved for members of the Scheduled Castes. Whereas Mr. Gupta was appointed against the general category or the open merit post, one Surinderjit Singh was selected and appointed against the only other reserved post. According to Mr. Kuldip Singh, the vacancy in the year 1965 against which Mr. J. K. Gupta was appointed would constitute the 'first opportunity' for the petitioner as per Rule 5(1) of Rules. To me this submission appears to be wholly fallacious. Firstly, as already pointed out, the petitioner was appointed against a reserved post meant for the Released Armed Forces Personnel as he was and no such post could be reserved in terms of the Rules with effect from a date prior to November 1, 1966. Therefore, neither the vacancy of the year 1965 could be treated as reserved nor could the petitioner be appointed against the same. The 'first opportunity' as mentioned in Rule 5(1) has to be a real opportunity, the chance of grabbing which by an appointee under the Rules is almost certain. As appointee who seeks the fixation of his seniority under the Rules has to establish that he was not only eligible but also not in any way handicapped in availing of that first opportunity. A Full Bench of this Court in *Khushbash Singh Sandhu v. The State of Punjab* (3), while examining a similar ques-

tion in the light of Rule 4(1)(a) of the Punjab Civil Service (Executive Branch) Rules, 1972, which rule too envisages reservation in favour of Demobilised Indian Armed Forces Personnel, held that "such a person should be eligible to enter the competition on the first opportunity he had after joining the military service or training prior to the Commission. Such opportunity, though assumptive, has to satisfy the conditions prescribed by the Rules. The opportunity has to be viewed in the light of rule 3 prescribing the minimum academic qualification. If a Demobilized Indian Armed Forces Personnel does not fulfil any of the conditions mentioned in rule 3, he cannot get an entry into the competitive examination for the Service." This ratio to my mind applies to the facts of the instant case also inasmuch as the petitioner who is an appointee against a reserved vacancy meant for the Released Armed Forces Personnel has to show that such a vacancy was available to him on the date with effect from which he wants his seniority. It is beyond doubt that no reserved vacancy was available for the Released Armed Forces Personnel in the year 1965. Secondly, as already pointed out above out of the two vacancies against which Mr. J. K. Gupta, and Surinderjit Singh were appointed in the year 1970, one was reserved for the members of the Scheduled Castes. Rule 3(4) of the Rules provides that the number of vacancies reserved for the Released Armed Forces Personnel and the Scheduled Castes, Scheduled Tribes and Backward Classes, etc. , in any service cannot exceed 50 per cent of the total number of vacancies in a given year. Now in the year 1970, one of the posts having been reserved in favour of the Scheduled Castes people, could it be said that the petitioner had a chance to enter into service when no posts as a matter of fact had been reserved in favour of the Released Armed Forces Personnel. The petitioner being a candidate or an appointed from the reserved category can obviously not put forward his claim to the general category or open merit post which has gone to Shri J. K. Gupta. So under no circumstances the petitioner can have his deemed date of appointment in the year 1965.

(5) For the reasons recorded above I find no infirmity in the impugned order Annexure P. 3. The petition thus fails and is dismissed but with no order as to costs.

N.K.S.