
R.N.R.

Before Satish Kumar Mittal & Mohinder Pal, JJ.

STATE OF PUNJAB AND OTHERS,—Appellants

versus

MALKIAT SINGH,—Respondents

LPA No. 306 of 1997

in CWP No. 12046 of 1991

27th August, 2010

Constitution of India, 1950—Art. 226—Punjab Government National Emergency (Concession) Rules, 1965—Rl. 4—Petitioners joining Armed Forces prior to declaration of emergency & serving during entire period of emergency—Whether entitled to benefit of ‘military service’ under 1965 Rules—Held, yes—Rl. 4 does not restrict benefit of military service to only those military personnel who joined armed forces during period of Emergency—No illegality in order of Single Judge granting benefit of military service to persons who joined armed forces prior to declaration of emergency.

Chittaranjan Singh Chima and another versus State of Punjab and others, 1997(2) RSJ 159 and Ram Janam Singh versus State of U.P. (1994) 2 SCC 622, distinguished on facts.

Held, that all the petitioners were already in service, when the first Emergency was declared. Rule 4 of the Rules of 1965 does not restrict the benefit of military service to only those military personnel who joined the armed forces during the period of Emergency. Rule 2 of the Rules of 1965 provides that for the purposes of these rules, the expression 'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including 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 of India on 26th October, 1962 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.

(Para 6)

Constitution of India, 1950—Art. 226—Punjab Government National Emergency (Concession) Rules, 1965—Rl. 4—Petitioners rendering military service during emergency and joining civil services—Claim for benefit of military service—Rejection of on ground that on deemed dates of their appointment in civil services petitioners were not qualified to hold civil posts—Whether entitled to benefit of 'military service' under 1965 Rules—Held, yes—No illegality in order of Single Judge granting benefit of military service to petitioners.

Held, that the benefit of military service rendered by the petitioners during the period of Emergency was denied to them on the ground that if the said benefit of military service is granted to them, then on the deemed dates of their appointment in civil services, they were not qualified to hold the civil posts, to which they were appointed after discharge from armed forces. The learned Single Judge has granted the benefit of military service rendered by the petitioners during the period of emergency while following two decisions of the Hon'ble Supreme Court in **Charan Singh and another**

versus State of Punjab and others and Amarjit Singh versus State of Punjab. Therefore, there is no illegality in the direction issued by the learned Single Judge, with regard to the second category of petitioners.

(Paras 9 and 10)

Constitution of India, 1950—Art. 226—Punjab Government National Emergency (Concession) Rules, 1965—Rl. 4—Discharge from service on compassionate grounds—Whether entitled to benefit of ‘military service’ under 1965 Rules—Held, yes—No illegality in order of Single Judge granting benefit of military service to petitioner.

Held, that the benefit of military service rendered during the period of Emergency was denied to the petitioner on the ground that he was discharged from the armed forces on compassionate grounds. The ground on which they were released are immaterial. If once they are held to be ex-servicemen, they are entitled to the benefits of Rule 4 of the Rules of 1965.

(Para 11)

D.S. Brar, DAG, Punjab, *for the appellants-State.*

B.S. Schgal, Advocate, *for the respondents.*

SATISH KUMAR MITTAL, J.

(1) This order shall dispose of Letters Patent Appeals No. 306 to 315 of 1997, which are arising out of a common judgment dated 23rd July, 1996, passed by the learned Single Judge in ten different writ petitions. The learned Single Judge divided those ten petitions in three categories.

(2) The first category comprised of CWPs No. 482 and 1453 of 1985, 331 of 1988, 5351 and 10922 of 1990 and 12046 of 1991. All the petitioners in these six petitions, joined the armed forces prior to the declaration of Emergency in the country on 26th October, 1962. They served the armed forces during the entire period of Emergency upto 10th January, 1968. After discharge from the armed forces, they joined civil services in the State of Punjab in different departments, where they claimed the benefit of military service rendered by them during the period of Emergency, i.e. from 26th October, 1962 to 10th January, 1968, for the purposes of

(Satish Kumar Mittal, J.)

pay, seniority, pension etc. as envisaged by Rule 4 of the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter referred to as 'the Rules of 1965'). The respondents (appellants herein) declined the said benefit to the petitioners in this category of cases, solely on the ground that they had not joined the armed forces during the period of Emergency. They had joined the armed forces much prior to the declaration of Emergency and they just happened to serve during the period of Emergency, therefore, according to the appellants, those petitioners were not entitled to the benefit under the Rules of 1965.

(3) The learned Single Judge, while relying upon the judgment of the Hon'ble Supreme Court in **Dhan Singh & Ors. versus State of Haryana & Ors. (1)**, and a Division Bench decision of this Court in **Jaimet Singh versus The District and Sessions Judge, Amritsar, (2)**, allowed all the six writ petitions, while holding that the employees who had joined the armed forces even prior to the declaration of Emergency, would also be entitled to the benefit of military service rendered during the period of Emergency in accordance with Rule 4 of the Rules of 1965. It was held that since the Rules of 1965 have not been amended by the Punjab Government, as amended by the Haryana Government in the year 1976, therefore, these employees are entitled to the said benefit.

(4) In Dhan Singh's case (*supra*), which was a case from the State of Haryana, amendment in Rule 2 of the Rules of 1965, made by the Haryana Government,—*vide* Notification dated 9th August, 1976 was challenged, whereby it was provided that for the purpose of these rules the expression 'military service' means enrolled or commissioned service in any of three wings of the Indian Army Forces rendered by a person during the period of operation of the proclamation of Emergency made by the President under Article 352 of the Constitution of India on 26th October, 1962 in any of the three wings of the Indian Armed Forces. While upholding the said amendment, the Hon'ble Supreme Court relied upon its earlier decision in **K.C. Arora & Ors. versus State of Haryana & Ors. (3)**, where it was held that if an ex-army personnel had joined the State service prior to the amendment and has been given the benefit of military service rendered

(1) AIR 1991 S.C. 1047

(2) 1995 (2) S.L.R. 313

(3) AIR 1987 S.C. 1858

during the period of Emergency, though he had joined prior to the declaration of Emergency, the Government cannot take away the accrued rights of that ex-army personnel, even by making amendment to the Rules with retrospective effect. While relying upon the judgment of the Supreme Court in **Dhan Singh's case** (*supra*), a Division Bench of this Court in **Jamiet Singh's case** (*supra*) has taken the view that if a person had joined the Armed Forces prior to the proclamation of Emergency and had continued to serve after its cessation on 3rd January, 1968, the period of service rendered by him from 26th October, 1962 to 8th January, 1968 has to be treated as 'military service' and he is entitled to the benefit of that service during the Emergency for the purposes of increments, seniority and pension etc., as admissible under Rule 4 of the Rules of 1965.

(5) During the course of arguments, learned counsel for the appellant relied upon a decision of the Hon'ble Supreme Court in **Chittaranjan Singh Chima and another versus State of Punjab and others** (4), wherein it was held that the benefit of seniority of service rendered in the military towards seniority on civil posts cannot be granted to those personnel who had taken the military service as a career and after retirement, they came to be appointed on civil posts in the quota prescribed for demobilised military personnel, since they were not recruited during Emergency. In that case, two appellants were recruited before the declaration of Emergency and were released from the armed forces in the year 1974. They were declined the benefit of military service on their civil posts, to which they were subsequently appointed on 30th September, 1974 and 29th October, 1976. While quoting the definition of 'military service' as defined in the Rules of 1965, it was observed that for the purpose of military service, it would be an officer enrolled or commissioned in any of the three wings of the Indian Armed Force and rendered service during the period of operation of the proclamation of Emergency and such of the military service as may be declared thereafter by the Government for the purpose of the entitlement under the Rules. It was further observed that the benefit of military service under these Rules could be granted to those officers who rendered service in the military during Emergency with a view to encourage the personnel who came forward to serve the country at the time of emergency. The Hon'ble Supreme Court delivered the said judgment, while following its

another judgment in **Ram Janam Singh versus State of U.P.**, (5), wherein it was held that preferential treatment be given to those who joined armed forces during Emergency and that grant of notional seniority in civil services by taking into account service rendered in armed forces is constitutionally valid, but such benefit cannot be extended to those who joined armed forces during normal times.

(6) We have gone through the judgment of **Ram Janam Singh's case** (*supra*). That judgment was delivered in different facts. In that case, the personnel who were seeking the benefit of military service joined the armed forces after 10th January, 1968, when the Emergency was over and before 3rd December, 1971, when second Emergency was imposed. In view of the said fact, it was observed by the Hon'ble Supreme Court that the persons recruited to armed forces during the period intervening between two Emergencies were on the lookout for a career and joined armed forces of their own volition. It can be presumed that they were prepared for normal risk to which armed forces are exposed. If benefits are extended even to members of armed forces who joined during normal times, members of civil services can make a legitimate grievance that their seniority is being affected. In these facts, it was observed as under :

“The High Court was in error in treating the respondent who had been commissioned on 6th September, 1970 after the revocation of emergency, to belong to the same class as those who had been commissioned after 1st November, 1962 but before 10th January, 1968. The High Court was not justified in directing not to give effect to rule 3(1) of 1973 Rules and Rule 3(b) of 1980 rules so far respondent was concerned, for excluding the period from 11th January, 1968 to 2nd December, 1971 while determining the seniority of the said respondent.”

In our opinion, the aforesaid decision of **Ram Janam Singh's case** is not applicable to the facts and circumstances of the case. In the present case, all the petitioners were already in service, when the first Emergency was declared, Rule 4 of the Rules of 1965 does not restrict the benefit of military service to only those military personnel who joined the armed forces during the period of Emergency. Rule 2 of the Rules of 1965 provides that for the purposes of these Rules, the expression 'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed

Forces (including 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 of India on 26th October, 1962 or such other service as may hereafter be declared as military service for the purposes of these Rules. Any period of military training followed by military service shall also be reckoned as military service. In the State of Punjab, this Rule was never amended. However, in the State of Haryana, vide Notification dated 9th August, 1976, this Rule was substituted by the following 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 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.”

This amendment was made applicable in Haryana. The aforesaid Rule, as substituted by the Haryana Government, came for consideration before the Hon'ble Supreme Court in **K.C. Arora's case** (*supra*) and **Dhan Singh's case** (*supra*) and it was interpreted that if an ex-army personnel had joined the State service prior to the amendment and has been given the benefit of military service rendered during the period of Emergency, though he had joined prior to the declaration of Emergency, the Government cannot take away the accrued rights of that ex-army personnel, even by making amendment to the Rules with retrospective effect. Therefore, in our opinion, the Division Bench of this Court in **Jaimet Singh's case** (*supra*), while relying upon the aforesaid judgments, has rightly held that if a person joined the armed forces prior to the declaration of Emergency and had continued to serve after its cessation on 3rd January, 1968, the period of service rendered by him from 26th October, 1962 to 8th January, 1968 has to be treated as ‘military service’ and he is entitled to the benefit of that service during the Emergency for the purposes of increments seniority and pension etc., as admissible under Rule 4 of the Rules of 1965.

(7) It is pertinent to mention here that the decisions of **Dhan Singh's case** (*supra*) and **K.C.Arora's case** (*supra*) have been followed by the Supreme Court in **Hav. Bharat Singh etc., versus State of Haryana and another (6)**, wherein it was held that the Rules of 1965, as amended by State of Haryana on 4th August, 1976, confer benefits to those who joined the State Government after having been in military service during the Emergency. It was open to the State to withdraw the offer, but not qua those who had already accepted the offer and joined the State Government service. By introducing amendment in the year 1976, the State Government did not withdraw the offer wholly but restricted it to those who had enrolled or were commissioned in the armed forces during the Emergency. The State Government was entitled to do so. But the grant of benefit of military service to those who had joined the State Government service while un-amended rules operated acquired a vested right, by reason of their having accepted the offer made thereby, which could not have been defeated by the amendment. It is admitted position that the Rules of 1965 were not amended by the Punjab Government, as amended by the Haryana Government. Therefore, in our view, the learned Single Judge has rightly come to the aforesaid conclusion that the benefit of military service during the Emergency period has to be granted even to those persons, who had joined the armed forces even prior to the declaration of Emergency.

(8) However, during the course of arguments, it was pointed out that *vide* notification dated 12th February, 1982, the Punjab Government repealed the Rules of 1965 and framed the Punjab Recruitment of Ex-Servicemen Rules, 1982. In our opinion, the framing of these new Rules will not affect the vested right of all those persons, who had joined the civil services before those Rules, because Rule 9 (3) of these new Rules of 1982 provides that nothing in these rules shall be construed as depriving any person to whom these rules apply of any right which had accrued to him under the rules, notifications or orders in force immediately before the commencement of these rules. It is not the case of the appellants that any of the petitioners from the six writ petitions of the first category joined the civil services after the framing of new Rules of 1982. Therefore, we do not find any illegality in the order, passed by the learned Single Judge qua petitioners in the six writ petitions of the first category.

(9) The second category comprised of CWPs No. 1962 of 1985, 637 of 1986 and 13631 of 1992. In those petitions, the benefit of military service rendered by the petitioners during the period of Emergency was denied to them on the ground that if the said benefit of military service is granted to them, then on the deemed dates of their appointment in civil services, they were not qualified to hold the civil posts, to which they were appointed after discharge from armed forces. The learned Single Judge has granted the benefit of military service rendered by the petitioners of those three writ petitions during the period of Emergency, while following two decisions of the Hon'ble Supreme Court in **Charan Singh and another versus State of Punjab and others**, (7), which was further followed by the Apex Court in **Amarjit Singh versus State of Punjab**. [SLP (C) No. 7881 of 1986, decided on 5th February, 1996]. In **Charan Singh's case (supra)**, it was held that Rule 4 of the Demobilised Armed Forces Personnel [Reservation of Vacancies in the Punjab State (Non-Technical Services)] Rules, 1968 (hereinafter referred to as 'the Rules of 1968') requires that the individual concerned must be qualified to appear for the examination for the posts in question after he is demobilised. However, he should not have been above the upper age-limit fixed for the said posts when he joined the military service. Reading of rule 4 (a) and (b) and Rule 5 of the Rules of 1968 together would suggest that it is not necessary that he should have been qualified to apply for the post when the first opportunity to occupy the said post became available to him while he was in military service. Similarly, in **Amarjit Singh's case (supra)**, the ex-serviceman was denied the benefit of his military service on the ground that the minimum qualification prescribed for appointment on the post of Inspector of Cooperative Societies was Graduation and he did not possess the said qualification on 14th April, 1965, the date from which he was claiming the benefit of military service. It was held that the reading of Rule 4 (a) and (b) and Rule 5 of the Rules of 1968 together would suggest that it is not necessary that the person should have been qualified to apply for the post when the first opportunity became available to him while he was in military service and that he must be qualified to appear for the post in question after he is demobilised. Since the ex-serviceman in that case had obtained the necessary qualification of Graduation in 1970, i.e., before he was demobilised from the Army, he was held entitled to claim the benefit of military service in accordance with law laid down in **Charan Singh's case (supra)**.

(7) (1998) 9 S.C.C. 283

(10) During the course of arguments, learned counsel for the appellants could not controvert the aforesaid legal position, as laid down by the aforesaid two judgments. He also could not cite any contrary judgement. Therefore, we do not find any illegality in the direction issued by the learned Single Judge, with regard to the second category of petitions.

(11) In the third category of cases, there was only one writ petition i.e. CWP No. 9215 of 1992, wherein under the Rules of 1965, the benefit of military service rendered during the period of Emergency was denied to the petitioner on the ground that he was discharged from the armed forces on compassionate grounds. This issue was already settled by the Hon'ble Supreme Court in **Raj Pal Sharma and others versus State of Haryana** (8), wherein a proviso added to Rule 4 of the Rules of 1965 to the effect that a person who has been released from the armed forces on compassionate grounds would not be entitled to the benefit under the Rules, was held to be ultra vires of Articles 14 and 16 of the Constitution of India. In that case, the Hon'ble Supreme Court has followed its earlier decision in **K.C. Arora's case** (*supra*) and it was held that the benefit of military service cannot be denied to the ex-servicemen under Rule 4 of the Rules of 1965, merely because they were released from military service on compassionate ground. The ground on which they were released are immaterial. If once they are held to be ex-servicemen, they are entitled to the benefits of Rule 4 of the Rules of 1965. The learned Single Judge, while relying upon the said decision, has held that the benefit of military service was illegally denied to the petitioner in that petition on the aforesaid ground. Accordingly, the appellants were directed to grant benefit of military service rendered by the petitioner during the period of Emergency.

(12) During the course of arguments, learned counsel for the appellants could not point out any illegality in the order passed by the learned Single Judge in the writ petition of the third category. He also failed to controvert the aforesaid legal position and could not cite any contrary judgment.

(13) In view of the above, all these ten appeals are without any substance and the same are, hereby dismissed

R.N.R.