



2024:PHHC:150301-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

Reserved on: 28.10.2024

Pronounced on: 19.11.2024

1. CWP-27842-2018

KAMIKAR SINGH AND ANOTHERPetitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

2. CWP-28488-2018

SARDUL SINGH AND ANOTHERPetitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

3. CWP-28499-2018

MANJIT SINGH AND ANOTHERPetitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

4. CWP-11888-2019

JOGINDER SINGH AND OTHERSPetitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

5. CWP-9339-2019

DAVINDER SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

6. CWP-9391-2019



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SWARAN SINGH AND OTHERSPetitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

7. CWP-9462-2019

HARDWINDER SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

8. CWP-15559-2019

MOHINDER SINGH AND ANR.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

9. CWP-15910-2019

KASHMIRA SINGH AND ORS.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

10. CWP-30034-2018

GURDIAL SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

11. CWP-30464-2019

BUR SINGH AND ORS.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

12. CWP-30027-2018

SAWARAN SINGH AND ANR.Petitioners

Versus



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STATE OF PUNJAB AND ORS.Respondents

13. CWP-21653-2018

SANTOKH SINGH AND ORS.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

14. CWP-27997-2018

BALDEV SINGH AND ANR.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

15. CWP-2027-2019

BALWINDER SINGH AND ANR.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

16. CWP-15939-2022

KARNAIL SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

17. CWP-30063-2018

BALBIR SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Dilpreet Singh Gandhi, Advocate
for the petitioners.



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Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. All the writ petition(s) herein involve common questions of facts and law, as such, they are liable to be decided through a common verdict.
2. In the instant writ petition(s), a challenge is made to the provision as occurs, after sub clause (iii) of clause (b) in Rule 8-B of the Punjab Recruitment of Ex. Servicemen Rules, 1982 (hereinafter for short called as the 1982 Rules). The provision (supra) became inserted through an amendment being made in the said Rules vide notification dated 10.04.2012.
3. For the sake of understanding the instant controversy, the 1982 Rules (un-amended), the amendment made theretos in the year 2009, besides the further theretos made amendments i.e. respectively in the year 2012 and in the year 2018 are also extracted hereinafter.

(Punjab Recruitment of Ex. Servicemen Rules, 1982)

“8-A Increments and pension– *Period of military service rendered during the First National Emergency from 26th October, 1962 to 9th January, 1968 shall count for increments and pension as under :-*

*(i) **Increments** - The period spend by a person on military service (restricted to emergency period from 26th October, 1962 to 9th January, 1968) after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count 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) **Pension** - The period of military service mentioned in clause shall count toward pension only in the case of appointments to permanent services of posts, subject to the following conditions:-*



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(1) *The person concerned should not have earned a pension under military rules in respect of the military service in question.*

(2) *Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government.*

(3) *The period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of the Government.*

This benefit shall be applicable to all those who were appointed in Government services before or after 11th February, 1982.”

[Punjab Recruitment of Ex. Servicemen (First Amendment) Rules, 2009]

“2. In the Punjab Recruitment of Ex. Servicemen Rules, 1982 after Rule 8A, the following rule shall be inserted, namely:-

“8-B. Increments and pension- *Period of Military Service rendered during the second National Emergency from 3 rd December, 1971 to 25 th March, 1977, shall count for increments and pension as under:*

(a) ***INCREMENTS-*** *The increments for the aforesaid service shall be paid to those persons only, **who joined** and rendered service during the aforementioned period. This benefit will, however, be given only at the time of making first appointment on regular basis on a civil post or service under the Government. However, these increments will be taken into account when the pay of a person is subsequently fixed on account of his promotion, selection, new recruitment or revision of pay scale or otherwise ;*

(b) ***PENSION-*** *the period of military service, referred to above, shall count towards pension only in case of an appointment to a permanent post under the Government, subject to the following conditions, namely:-*

(i). *the person concerned should not have earned a pension under military rules in respect of the military service in question.*

(ii). *Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the Government; and*

(iii). *The period, if any, between the date of discharge from military service and the date of appointment to any service of post under the Government, shall count for pension; provided such period does not exceed one year. Any period exceeding one year, but not exceeding three years, may also be allowed to count for pension in exceptional cases under orders of the Government.”*

(Punjab Recruitment of Ex. Servicemen (First Amendment) Rules, 2012)



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“1. (1) These may be called the Punjab Recruitment of Ex.servicemen (First Amendment) Rules, 2012.

(2) They shall be deemed to have come into force on and with effect from the 1st day of December, 2011.

2. In the Punjab Recruitment of Ex. Servicemen Rules, 1982, in rule 8B:-

*(i) In clause (a) in the second line, the words “**joined and**” shall be omitted ; and*

(ii) in clause (b), after sub-clause (iii) the following para shall be added, namely:-

“These benefits shall be available to all the persons who were appointed in Government service against reserved vacancies and were in Service on 1st December, 2011 or are appointed thereafter;

Provided that these benefits shall be admissible for pay fixation on notional basis with effect from 1 st January, 2012 and arrears on account of pay shall not be paid.”

(Punjab Recruitment of Ex. Servicemen (First Amendment) Rules, 2018)

“Notification

The 7th December, 2018

No. G.S.R 89/Const./Art.309, 234 and 318/Amd.(10)/2018.- In exercise of the powers conferred by the proviso to article 309 read with articles 234 and 318 of the Constitution of India and all other powers enabling him in this behalf, the Governor of India is pleased to make the following rules further to amend the Punjab Recruitment of Ex-servicemen Rules, 1982 namely:-

Rules

1. (1) These rules may be called the Punjab Recruitment of Ex-servicemen (First Amendment) Rules, 2018.

(2) They shall come into force at once.

2. In the Punjab Recruitment of Ex-servicemen Rules, 1982, in rule 8-B,-

(i) In clause (a), for the words and signs “The increments for the aforesaid service shall be paid to those persons only, who joined and rendered service during the aforementioned period.”, the words, figures, signs and brackets “The increments for the aforesaid Service, shall be paid only to those persons, who were appointed in the Service during the aforesaid period (i.e. from the 3rd December, 1971 to the 25th March, 1971).” shall be substituted; and



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(ii) In clause (b), for sub-clause (iii), the following sub clause shall be substituted, namely:-

“(iii) the period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government, shall count for pension provided such period does not exceed one year. Any period exceeding one year, but not exceeding three years, may be counted for the said purpose in an exceptional case, subject, however, to the prior approval of the Government:

Provided that the aforesaid benefits shall be admissible on fixation of pay on notional basis on and with effect from the first day of January, 2012, and no arrears, shall be payable consequent upon such fixation of pay.”

[Emphasis Supplied]

Submissions of the learned State counsel.

4. At the outset, the learned State counsel submits that the challenge made to the aforesaid provision, as became inserted through an amendment becoming made vide notification dated 10.04.2012, rather becomes rendered infructuous, as through making of a further amendment vide notification dated 07.12.2018, the above said provision becomes omitted.

Submissions of the learned counsel for the petitioner(s).

5. However, the learned counsel for the petitioner(s) submit that despite the afore provision being omitted, yet the respondents have not granted any benefit to the petitioner(s) herein, inasmuch as, qua computation of pension or qua granting of increments appertaining to the period of theirs rendering military service, thus during the second national emergency, rather either in terms of the old Rules or in terms of the amended Rules, despite the same being granted to similarly situated persons.



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6. The common claim of the petitioner(s) herein, is that, they have rendered military service during the 2nd National Emergency and therefore, they are entitled to the grant(s) of benefits provided under the unamended Rules, thus, in terms of the judgment rendered by this Court in CWP-17661-2013 titled as '**Rajinder Singh Vs. State of Punjab and Others**'.

Reasons for rejecting the submissions of the learned counsel for the petitioners.

7. However, the instant writ claim founded upon the verdict (supra) is a mis founded reliance thereons, thus inter alia on the following grounds.

a) In the verdict (supra), the learned Division Bench of this Court after analyzing the provisions relating to the endowment(s) of the benefits of pension and of increments, as contemplated in the Punjab Recruitment of Ex. Servicemen (First Amendment) Rules, 2009 (hereinafter for short called as the 2009 Rules) and in the Punjab Recruitment of Ex. Servicemen (First Amendment) Rules, 2012 (hereinafter for short called as the 2012 Rules), thus recorded the hereinafter conclusions.

The above quoted rules amended in the year 2012 show that the amendment was applicable only to those ex-servicemen who were in service of the government on December 12, 2011 or appointed thereafter.

From the above quoted Rules, it is clear that so far as the benefit of military service rendered during the Second National Emergency towards increments is concerned, ex-servicemen who had joined and rendered service during the period of Second National Emergency were only held entitled to the same. So far as the benefit of pension is concerned, it was inconsequential whether the ex-servicemen had joined the military service during the Second National



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Emergency period or not. Thus, so far as the benefits of military service towards increments is concerned, all the petitioners having joined the military service prior to the Second National Emergency are held not entitled to the same. The petitioners reliance on the notification dated 10.4.2012 (as reproduced above) for the grant of benefit of military service towards increments is misplaced. A perusal of the notification dated 10.4.2012 would show that the same is applicable only to those ex-servicemen who are in the service of the Government as on 1.12.2011 or appointed thereafter. It is the admitted position that none of the petitioners were in the service of the government as on 1.12.2011 as all of them had retired earlier. However, so far as the pension is concerned, as there is no stipulation in the 2009 Rules that the benefit of military service during the Second National Emergency towards pension would be given only to those incumbents who joined the military service during the Second National Emergency period, all the petitioners would be entitled to the grant of military service benefit towards pension.”

b) Resultantly, in the operative part of the said verdict, operative part whereof is extracted hereinafter, the claim raised by the petitioner(s) therein was accepted, thus only to the extent of permissible endowment(s) being made to the petitioners vis-à-vis the benefit(s) appertaining to rendition of military service, hence during the Second National Emergency, but yet only towards pension. However, they were declared to not become entitled to the grant of any increments ensuing from rendition of military service during the Second National Emergency.

Accordingly, the writ petitions are partly allowed to the extent that the petitioners are held entitled to the grant of benefit of military service rendered by them during the Second National Emergency towards pension. However, they are held not entitled to the grant of any benefit of their military service rendered during the Second National Emergency towards increments.

8. Since the above verdict became unsuccessfully challenged by the aggrieved therefrom before the Hon’ble Apex Court, thereby the said verdict acquires binding and conclusive force, and, as such, the writ claim founded on the verdict (supra) but is required to be rejected.



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**Further Submissions on behalf of the learned counsel for the petitioners.**

9. That since the vires of the Punjab Recruitment of Ex. Servicemen (First Amendment) Rules, 2012 neither became challenged nor became decided. Consequently the counsel for the petitioner(s) submit that therebys irrespective of conclusivity becoming acquired by the verdict made by this Court in **Rajinder Singh's case (supra)**, yet on the premise (supra), he argues that the said challenge is yet open to be made.

Reasons for declaring the retained portion of the Rules to be ultra vires the Constitution of India.

10. Therefore, this Court proceeds to undertake the exercise of determining the constitutional validity of the provision (supra). In the said endeavour, it is relevant to allude to the fact that though the above underlined provision became deleted vide notification dated 07.12.2018 but the deletion caused to the said underlined provision, rather was only in part inasmuch as, only the statutory coinages “***These benefits shall be available to all the persons who were appointed in Government service against reserved vacancies and were in Service on Ist December, 2011 or are appointed thereafter;***” became deleted, whereas, the other therein statutory coinages “***Provided that the aforesaid benefits shall be admissible on fixation of pay on notional basis on and with effect from the 1 st day of January, 2012 and no arrears shall be payable consequent upon such fixation of pay***” rather remain undeleted and/or are still a part of the Rule regimen.



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11. *Prima facie*, the said retained part of the statutory phrases (supra) in the Punjab Recruitment of Ex. Servicemen (First Amendment) Rules, 2018 (hereinafter for short called as the 2018 Rules), but are plainly discriminatory and arbitrary, inasmuch as, they create a sub class of pensioners rather within the same homogenous class. The said inference ensues from the fact that despite in the un-amended Rules (supra), contemplations occurring rather manifesting that in terms of the said un-amended Rules, the rendition of military service during the second national emergency, thus endowing vis-à-vis the concerned, the right to claim the benefits of both pension as well as increments. Therefore, if the said endowment(s) were made to those who were then eligible, therebys, if post the makings of amendment to the Rules (supra), wherebys through the retention of the statutory phrases ***“Provided that the aforesaid benefits shall be admissible on fixation of pay on notional basis on and with effect from the 1 st day of January, 2012 and no arrears shall be payable consequent upon such fixation of pay”***, in the Rule regimen, thus the pensionary benefits as earlier under the supra un-amended Rules, became permitted to beget effective potentialization, though to those soldiers, who evidently rendered service during the Second National Emergency, rather therebys to a similar class of soldiers, who also evidently rendered service during the second national emergency, thus the pensionary benefits remain un-potentialized, thus through no monetary arrears thereof becoming computed rather only notional benefits becoming



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granted. In sequel, the apposite cut off date, thus visibly creates an untenable sub class within the same homogeneous class of pensioners.

12. Furthermore, the eligible soldiers, who were endowed the benefits under the un-amended Rules, as such, the present petitioner(s) who are also appointees against civil posts, but post the retention of supra coinages in the Rules (supra), though, reiteratedly were to be treated at par with those appointees against civil posts, who became so appointed rather prior to the retention of the said Rules in the Rule book. Contrarily, they have been untenably dis-similarly treated. In other words, though through the un-amended rules, the military personnel who served during the Second National Emergency and who were subsequently appointed to the civil posts besides whose appointments occurred prior to the retention of the supra coinages in the Rule book, thus become endowed the fullest benefits thereof. Therefore, if to the appointees against civil posts after rendition of military service during the Second National Emergency, thus the benefits envisaged in the un-amended Rules, became fully bestowed to them, whereas, the same benefits becoming snatched from the appointees against civil posts, through the above phrase(s) becoming retained in the Rule book, naturally therebys an arbitrary cut off date becomes prescribed.

13. Resultantly, when otherwise the appointees, who were governed by the un-amended Rules, thus become bestowed the benefits in terms of the military service rendered during the second national emergency, both qua increments and pension, whereas, if qua the



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concerned, who are now brought under the present governing regimen, who but also constitute the same or homogenous class alongwith the appointees' against civil posts, but prior to the prescription of the cut off date in the retained Rule regimen, thus similar benefits are snatched from them. In sequel, the said snatchings, thus through contra distinct contemplations in the earlier un-amended rules and in the present rule regimen, when thus yet become palpably done amongst/inter-se the same or homogenous class of pensioners, merely through the now created arbitrary cut off date, in the now retained provisions, therebys they are for the hereafter reasons but arbitrary.

a) The said contra distinct contemplations as made vis-à-vis the same set of persons or the same category of persons, is but naturally, without an intelligible differentia nor does it have any nexus with the object proposed to be achieved.

b) Contrarily, through the retention of the phrases i.e “***Provided that the aforesaid benefits shall be admissible on fixation of pay on notional basis on and with effect from first day of January, 2012 and no arrears shall be payable consequent upon such fixation of pay***” as earlier occur in the 2012 Rules and now in the 2018 Rules, rather the recognition of the military valor of those who served during the second national emergency rather has been arbitrarily snatched. As such, therebys the impugned provision but per se smacks of arbitrariness besides is antithetical to the concept of equality, as enshrined in Articles 14 and 16 of the Constitution of India.



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14. Therefore, the retained part of the provision (supra), both in the 2012 Rules and now in the 2018 Rules, inasmuch as “***Provided that the aforesaid benefits shall be admissible on fixation of pay on notional basis on and with effect from the first day of January, 2012 and no arrears shall be payable consequent upon such fixation of pay***’, thus is declared to be ultra vires of the Constitution of India.

15. In aftermath, the writ petition(s) are allowed. Resultantly, the retained part of the afore provision, as earlier exist in the 2012 Rules and now also exist in the 2018 Rules, is quashed and set aside.

16. The monetary arrears towards pension arising from the computation of military service rendered during the Second National Emergency, besides the further computation of further monetary pension vis-a-vis only the eligible petitioner(s), thus, upon their superannuating from the civil posts be forthwith released to them.

17. Be that as it may, the claim of the petitioner(s) herein, in each of the writ petition(s) are required to be dealt with individually. In the said regard, the reasons for either accepting or rejecting of the claim of the petitioner(s), as given by the respondents, in each of the writ petition(s), are extracted hereinafter.

Sr. No.	CWP No.	Name of the Petitioners	Reasons for either acceptance or rejection of the claim
1.	CWP-27842-2018	1. Kamikar Singh 2. Karnail Singh	Already drawing pension from Indian Army.
2.	CWP-28488-2018	1. Sardul Singh 2. Lal Singh Gill	Both the petitioners joined before the proclamation of Second National Emergency, hence, the claim of the petitioners are not covered under the notification dated 07.12.2018.
3.	CWP-28499-2018	1. Manjit Singh 2. Amrik Singh	No reply filed.



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4.	CWP-11888-2019	1. Joginder Singh 2. Bakhtawar Singh 3. Gurdev Singh	Petitioner No. 1 is drawing pension from the Indian Army. Petitioners No. 2 and 3 joined before the proclamation of Second National Emergency, hence, the claim of the petitioners are not covered under the Notification dated 07.12.2018.
5.	CWP-9339-2019	1. Davinder Singh	Petitioner is already drawing pension from the Indian Army.
6.	CWP-9391-2019	1. Swaran Singh 2. Sarwan Singh	Both the petitioners joined before the proclamation of Second National Emergency, hence, the claim of the petitioners are not covered under the Notification dated 07.12.2018.
7.	CWP-9462-2019	1. Hardwinder Singh	Drawing pension from his earlier service rendered in the Indian Navy.
8.	CWP-15559-2019	1. Mohinder Singh 2. Jit Singh	Pay of both the petitioners has been re-fixed and further forwarded to the Office of Accountant General, Punjab for further final disposal. Hence their case becomes infructuous.
9.	CWP-15910-2019	1. Kashmira Singh 2. Surjit Singh 3. Rewal Singh	Petitioners No. 1 and 3 retired from civil service before 01.12.2011, hence, the claim of the petitioners were not covered for increments and pension as they already earned pension from Army for Second National Emergency period. Petitioner No. 2 retired from the civil service after 01.12.2011, hence, the claim of petitioner No. 2 was covered for increments only and not for pension as he already earned pension from Army for Second National Emergency period.
10.	CWP-30034-2018	1. Gurdial Singh	Petitioner was enrolled as temporary constable w.e.f. 16.10.1991 under the priority list instruction as terrorist victim family. Petitioner was not enlisted under Ex-serviceman quota.
11.	CWP-30464-2019	1. Bur Singh 2. Amrik Singh 3. Kashmir Singh 4. Sukhcharan Singh	Petitioner No. 1 was enrolled as Constable in Punjab Police, after the break of 3 years and 10 months and retired from Police Department on 31.12.2005 i.e. prior to 01.12.2011, hence does not fulfill the conditions of military service benefits of 2 nd National Emergency period. Petitioner No. 2 was enrolled as Constable in Punjab Police, after the break of 6 years on 23.06.1989 and retired from Police Department on 30.06.2008 i.e. prior to 01.12.2011, hence does not fulfill the conditions of military service benefits of 2 nd National Emergency period. The pay of petitioners No. 3 and 4 has been re-fixed, hence their case has been rendered infructuous.
12.	CWP-30027-2018	1. Sawaran Singh 2. Gurdev Singh	Both the petitioners were already drawing pension from the military authorities.
13.	CWP-21653-2018	27 petitioners	The petitioners are not entitled for the said benefits.
14.	CWP-27997-2018	1. Baldev Singh 2. Mohinder Singh	Both the petitioners are entitled to grant of benefit of military service rendered by them during the Second National Emergency towards pension. Hence, the present writ petition is rendered infructuous.



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15.	CWP-2027-2019	1. Balwinder Singh 2. Karnail Singh	Pay of petitioner No. 1 has been revised in lieu of military service rendered by him during the second national emergency. No information with regard to petitioner No. 2 has been provided by the Office of SSP, Kapurthala.
16.	CWP-15939-2022	1. Karnail Singh	No reply filed.
17.	CWP-30063-2018	1. Balbir Singh	Drawing pension for the military service rendered by him.

18. Evidently, the Rules (supra) state that the rendition of military service during the Second National Emergency from 03.12.1971 to 25.03.1977, thus shall count for computation of increments and for computation of pension. However, the supra endowment(s) as made thereunder(s), especially towards pension is made subject to the person concerned not earning pension under the military rules in respect of the rendered military service. Therefore, for the petitioner(s) becoming entitled for the endowment vis-a-vis them of pension, as envisaged in the Rules (supra), but after the period of military service rendered by them, during the national emergency (supra) being also counted, therebys, they were required to adduce evidence, that they in terms of the above extracted Sub Clause (i) of clause (b) of Rule 8-B of the Rules (supra), rather had not earned pension for the rendered military service, even if the said rendered service became so rendered during the period of the Second National Emergency.

19. Therefore, unless the validity or the vires of the said Rules became successfully challenged, thereupon, the supra underlined condition relating to endowment(s) of pensionary benefits, thus through the counting of the rendered military service, during the Second



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National Emergency from 03.12.1971 to 25.03.1977, rather does necessarily apply with the fullest effect qua the petitioner(s) concerned. Resultantly if the present petitioner(s), had earned pension for their rendered military service, thus covering even the phase of the Second National Emergency. Therefore, unless they were not receiving pension for the said rendered period of military service, therebys alone, they became entitled for the said period of service becoming counted for their earning pensionary benefits, upon, theirs becoming appointed against a civil post besides obviously theirs superannuating therefroms.

20. In other words, if the petitioner(s) had become endowed the benefits of pension for the said term of military service, therebys, as expostulated in the supra underlined Rules, they became barred to claim that the said period of service be counted towards the fixation of pension thus for the subsequent term of their civil employment. Moreover, the supra underlined Rules, thus sub serves a holistic purpose, inasmuch as, it erases all the ill effects of the defence personnel concerned becoming endowed with dual pensionary benefits, inasmuch as, despite theirs receiving pension for the supra period, theirs yet espousing that the period of service (supra) be again counted for the purpose of computing pension for the term of their service against a civil post.

21. Therefore, since in the writ petition(s) (supra), evidently qua those petitioner(s) who were the recipients of pension(s) for the previously rendered military service by them, which also covered the phase (supra), therebys, they became dis-entitled to claim that the said



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period of service be re-counted for the fixation of their pension, upon, their superannuating from the civil post.

22. The second reason for rejection of the claim of the petitioner(s) by the respondents, as extracted above, is that, the petitioner(s) who joined service before the proclamation of Second National Emergency, therebys, they are in view of the notification dated 07.12.2018, thus not entitled to the grant of any benefit towards the service rendered during the Second National Emergency.

23. However, the counsel for the petitioner(s) submit, that the said benefit was denied not only qua the granting of benefit of increments but even the pensionary benefits have been denied to the petitioner(s), who joined military service, rather even before the commencement of the Second National Emergency and who had also served during the said period.

24. The counsel for the petitioner(s) further argues, that since the rendition of military service during the Second National Emergency even by the already serving soldiers, rather when *prima facie*, was the conspicuous reason, for the supra endowment(s) being made, but since endowment(s) towards increments or pension were yet made only to those who joined military service during the Second National Emergency, whereupons the (supra) endowment(s) become arbitrarily snatched from those who were already then in military service. Therefore, the counsel for the petitioner(s) argues, that therebys also an irrational classification rather has been created, which has no nexus with the object sought to be achieved. However, the above argument



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has no vigor as the said issue has been settled through a judgment rendered by the Principal Division Bench of this Court in case titled as **Surjit Singh Vs. State of Punjab and Others**, to which CWP-12533-2017 became assigned. The relevant paragraph No. 19 of the said verdict is extracted hereinafter.

19. In the case in hand, the State has decided to extend benefit of military service to those persons who were appointed during second emergency. The classification seems to be reasonable. The persons, who had served during first emergency as well as second emergency or were appointed prior to declaration of second emergency, had worked as a matter of their job responsibility whereas persons who joined armed forces during period of emergency declared on account of war, consciously decided to serve the nation during tough time. They cannot be treated at par with those persons who were already in service. The respondent had granted benefit of service of second emergency in 2009 which apparently indicates that it was neither fundamental nor vested right of the petitioners. There is no manifest arbitrariness or unreasonableness in restricting benefit of second emergency to those persons who were appointed during the period of emergency. This Court does not find any arbitrariness or unreasonableness in the action of respondent warranting interference of this Court. Thus, impugned Rule 8B is hereby declared valid.

25. The said paragraph, as occurs in the verdict (supra) relates to denial of increments to those soldiers, who were in service prior to the declaration of Second National Emergency, whereas, the benefit of increments becoming endowed only to those personnel, who joined military service during the Second National Emergency.

26. However, yet in the verdict rendered by a Division Bench of this Court in **Rajinder Singh's case (supra)**, which became upheld by the Apex Court, wherein, in the relevant paragraph extracted above, it has been expostulated that *so far as the benefit of pension is*



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concerned, it was inconsequential whether the ex-servicemen had joined the military service during the Second National Emergency period or not. Therefore, the claim of the petitioner(s) with regard to grant of pension has to be decided in view of the expostulations made in the verdict (supra).

27. The third reason for rejecting the claim of the petitioner(s) concerned, is that, the petitioner(s) concerned, rather not fulfilling the conditions spelt in clause (iii) of Rule 8-B of the Rules (supra), provisions whereof are extracted hereinafter.

(iii) The period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may be counted for the said purpose in an exceptional case, subject, however, to the prior approval of the Government :

28. In the provisions embodied in clause (iii) of the Rules (supra), thus expostulations occur qua in the event of a soldier after his discharge/superannuation from military service, becomes appointed to a service or post under the Government, thereupon, only when the said re-appointment is made upon a period of one year elapsing, since the happening of the discharge of the soldier, thus the period of rendition of military service, hence is to be counted towards endowing the benefits of pension to the soldier, rather upon his superannuating from the civil post concerned. Moreover, there is a further power in the Government to, but only in exceptional circumstances, where a period of three years



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elapse since discharge of the soldier from military service, and his re-appointment taking place, thus endow to the soldier, who has evidently served during the Second National Emergency, the benefits/periods of his military service rather becoming counted for the purpose of increments or for purposes of pension.

29. However, the said provisions are required to be read down, as they both are oppressive and arbitrary, inter alia, on the following grounds :

a) They create an onerous burden upon the military soldier, who evidently served during the Second National Emergency, to ensure, that within one year from the date of his discharge and/or within three years of his discharge, rather his ensuring his appointment being made to any service or post in the Government, for therebys making the relevant rendered military service during the Second National Emergency, thus reckonable for the purpose of increments and pension.

b) Even if assumingly some civil posts, did become advertised before the supra elapsings taking place, especially in the interregnum inter-se his discharge from military service and upto his becoming appointed against a civil post, whereupon, with the present petitioner(s) evidently not applying against the said post, thus the said bar may have become attracted against them. However, yet there was a requirement qua the existence of evidence on record, personifying that despite the apposite advertisement of civil post(s) being made but before the elapsings of one or three years from the date of discharge of



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the present petitioner(s) from military service, yet the present petitioner(s) not applying for the said advertised posts.

c) If the said evidence does not surge forth nor obviously is brought on record, thereby when in the supra phase rather no civil posts became advertised, to enable the petitioner(s) to apply thereagainsts, thus after their discharge from military service. Consequently, when the advertisement of post(s) falling to the category of the present petitioner(s), but was an imperative necessity rather obviously for enabling the present petitioner(s) to apply thereagainst. However, when for reasons (supra) no post(s), thus falling to the ex-servicemen category, rather became advertised, before the elapsing of either one or three years since the date of discharge of the present petitioner(s) from military service.

30. In sequel, if yet it is pressed that the present petitioner(s) are to be barred from receiving the benefit of their rendered military service during the Second National Emergency, thereupon, it would result in grave prejudice being heaped upon the present petitioner(s). Moreover, thereby the Rule (supra) would work as an exacting oppression, thus against the monetary interest of a soldier, who evidently served during the Second National Emergency.

31. In the face of the above, the above extracted provisions embodied in clause (iii) of the Rules (supra) are required to be read down in the manner (supra) but favourably vis-a-vis the present petitioner(s), thus given the piquant facts and circumstances at hand.



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32. In sequel, the writ petition(s) are disposed of but with a direction to the respondents to decide the claim of the each of the writ petitioner(s) herein through passing of a speaking order but in terms of the observation(s) (supra) made by this Court.

33. The passing of the said orders shall be made within a period of three weeks from today.

34. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

19.11.2024

kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No