

PUNJAB STATE ELECTRICITY BOARD, PATIALA AND ANR.

v.

SURJIT SINGH BRAR

NOVEMBER 18, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law*

*Punjab Government National Emergency (Concession) Rules, 1965: Rules 2 and 4.*

*Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab Non-Technical Service) Rules, 1968;*

*Ex-servicemen quota—Claim for benefit of increments and seniority on re-employment in State service on the basis of service during second Emergency (1971 War)—Respondent joined the Army in May 1963 and was discharged from military service in September 1973—Appointed in 1979 as L.D.C. against ex-servicemen quota and granted benefit of increments and seniority in terms of Rules 2 and 4 of 1965 Rules—Subsequently realising the mistake that respondent was not entitled to increments, the benefit was withdrawn in 1988—Suit by respondent dismissed by trial Court—Appellate court and High Court allowed the claim—Held, in order to avail concession on the basis of services during second Emergency, the candidate must be a government servant having been called for the military service during the second Emergency—The person who joined the service during period of first Emergency is not entitled to claim the benefit of the period of service rendered during the second Emergency—Respondent was not entitled to the increments which were rightly withdrawn.*

*Ex Captain A.S. Parmer and Ors. v. State of Haryana and Ors., (1968) LAB IC 894, relied on.*

*(Ex. Capt.) Randhir Singh Dhull v. S.D. Bhambri and Ors., [1981] 2 SCC 338, held no longer a good law.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15073 of 1996.

A From the Judgment and Order dated 7.10.93 of the Punjab and Haryana High Court in R.S.A. No. 896 of 1993.

Swarup Singh and Ms. Kirti Misra for the Appellants.

Pradeep Misra for the Respondent.

B

The following Order of the Court was delivered :

Leave granted.

C

We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment of the learned single judge of the High Court of Punjab and Haryana made on October 7, 1993 in RSA No. 896/93.

D

The admitted facts are that the respondent had joined military service after the declaration of Indio-China War. Emergency was declared on October 26, 1962. The respondent joined the Army on May 25, 1963. The Government of Punjab exercising the power under proviso to Article 309 of the Constitution passed the Punjab Government National Emergency (Concession) Rules, 1965 ( for short, the Rules). The Rules provided for benefit of pay and seniority to ex-servicemen re-employed in civil services.

E

The respondent was discharged from military service on September 24, 1973 and thereafter, he was appointed in January, 1979 as L.D.C. in ex-servicemen quota. He was granted the benefit of the increments and seniority in terms of Rules 2 and 4 of the Rules. Subsequently, realising

F

the mistake that he was not entitled to two increments after the Indo-China Emergency was lifted, the same was recalled by order dated 21.4.1987. After issuing the notice, they withdraw the benefit on February 18, 1988. Calling in question, the said action of the appellants, the respondent filed a civil suit on April 27, 1988. It may be relevant, at this juncture, to note that during Indo-Bangla War, the Government had

G

declared the Emergency on December 3, 1971 which was lifted on March 22, 1973. Consequently, the respondent has claimed the benefit of seniority and pay for the period of service rendered during the period of second Emergency. The trial Court dismissed the suit but on appeal the Additional District Judge allowed the appeal and decreed the suit and granted the benefit of two increments. When second appeal was filed, the High Court

H

dismissed the same. Thus, this appeal by special leave.

The contention raised by the learned counsel for the appellant is that under the Rules, the personnel who rendered the military service during Emergency of Indo-China war alone is entitled to the benefit. Though the respondent continued after the lifting of the first Emergency and during the period of second Emergency, namely, Indo-Bangala War, the period of said service would not be counted under the Rules. We find force in the contention. This question, in the first instance, was considered by this Court in *Ex. Capt. Randhir Singh Dhull v. S.D. Bhambri and Ors.*, [1981] 2 SCC 338 and this Court had granted the benefit. The same was reviewed by this Court in *Ex. Captain A.S. Parmar and Ors. v. State of Haryana and Ors.*, (1968) LAB. IC 894 wherein this Court extracted the definition of the military service which reads as under:

“Definition: For the purposes of these rules, expression military service, means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including services 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 on the 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.”

“4. Increments, seniority and pension, Period of military service shall count for increments, seniority and pension as under:-

(i) Increment—The period spent by a person on military service, 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.”

This Court had held that the words emphasised clearly showed that it is only the service rendered during the period of Emergency that would be taken into account and not any other period. No doubt, there is also provision for other service being declared as military service, but no order of the Government making such declaration has been brought to our notice.

- A Thus, it could be seen that this Court has settled that the military service would be the service rendered during the first Emergency unless there is any further declaration under the Rules given by the State covering the second Emergency. The personnel who joined the service during the period of first Emergency is not entitled to claim the benefit of the period of service rendered during the second Emergency. The learned counsel for the respondent placed reliance on the Circular Letter No. 325 SII (3)-72 of 5866 dated February 24, 1972 and contended that the Government of India in paragraph 2 thereof, has issued the benefit of military service to those who continued under the first Emergency. The State Government in paragraph 3, have also extended the same benefit and, therefore, the respondent is entitled to the benefit thereof. We find that there is no force in the contention. Para 2 thereof relates to the Central Government Servants who have joined the military service during second Emergency and continued thereafter became entitled to the benefit. Admittedly, the respondent is not a Central Government Servant and, therefore, para 2 thereof has no application. Para 3 also does not apply to the respondent because he was not in Government Service before he joined the military service which reads as under:

- D “The Punjab Government have decided that the civil Government employees who are/have been called for military service during the present Emergency shall be eligible to the concessions enjoined in the Punjab Government National Emergency (Concessions) Rules, 1965 read with the Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab Non-Technical Service) Rules, 1968.”

- E A reading thereof clearly indicates that the candidate must be a Government servant having been called for the military service during the second Emergency; such Government servant shall be eligible to the concessions enjoined in the Punjab Government National Emergency (Concessions) Rules, 1965 read with the Demobilised Armed Forces Personnel (Reservation of vacancies in the Punjab Non-Technical Service) Rules, 1968. Under these circumstances, the respondent is not entitled to two increments which were wrongly given and rightly withdrawn.

G The appeal is accordingly allowed. The orders of the High Court and the District Judges stand set aside and the suit of the respondent stands dismissed. No costs.