

STATE OF PUNJAB AND ANR.

v.

CHARANJI LAL GOEL

OCTOBER 9, 1996

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

Service Law :

Punjab Government National Emergency (Concession) Rules, 1965/Punjab Civil Services Rules, Volume II.

Rules 4 and 5/Rules 3.9, 3.10 and 3.11, Punjab Government Memorandum dated 28.2.1973—Tagging of military service—Sub-Inspector, Professional Tax—Joined Army as Commissioned Officer in 1963—Released from Army in September 1969—Selected as Taxation Inspector and joined the post in January 1970—Benefit of military service for the purpose of seniority etc. given—Later selection as Assistant Excise and Taxation Officer through direct recruitment in 1972—Claim for benefit of Rules 4 and 5 of Concession Rules—Held, since the employee had already availed the benefit of military service while his selection as Taxation Inspector and the benefit stood exhausted, he is not eligible again to claim the said benefit when he was directly recruited as Assistant Excise and Taxation Officer.

S.B. Dogra v. State of Himachal Pradesh and Ors., [1992] 4 SCC 455, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1767 of 1980.

From the Judgment and Order dated 5.12.79 of the Punjab & Haryana High Court in C.W.P. No. 3450 of 1979.

Sudhir Walia for Manoj Swarup for the Appellant.

Ms. Laxmi Arvind (N.P.) for the Respondent.

The following Order of the Court was delivered :

This appeal by special leave arise from the judgment of the Punjab and Haryana High Court made on July 27, 1979 in Writ Petition No. 3450 of 1979.

A Undisputed facts are that the respondent had initially joined as Sub-Inspector with Professional Tax (Finance Department) on November 7, 1962. During emergency, he had joined as Commissioned Officer in the Army on October 26, 1963 and was released from the Army on September 18, 1969. Subsequently, as he was released Army personnel had applied for and was selected as Taxation Inspector and joined the services on January 29, 1970. He was given the benefit of seniority w.e.f. October 26, 1963, the date on which he joined the Army as Commissioned Officer. Later on, for direct recruitment for the post of Assistant Excise and Tax Officer, when was published by the Public Commission, he had appeared for and was selected in 1972 as Assistant Excise and Tax Officer. He took the stand in the writ petition that Rule 4(II) of the Punjab Government National Emergency (Concession Rules), 1965 (hereinafter referred to as 'Rules') would be applicable to him and the High Court directed to give him seniority from October 26, 1963 and consider him with all consequential benefits. Thus, this appeal by special leave.

D The only question is : whether the respondent is entitled to the benefit to seniority from October 26, 1963 for the second time, when he had already joined as Taxation Inspector on January 29, 1970 and had availed the benefit of the previous service. Further when subsequently he was appointed as Assistant Excise and Tax Officer in 1972 whether Rule 4 would apply which reads thus :

E "4. Increments, seniority and pension :

period of military service shall count for increments, seniority and pension as under :

F (i) Increments : 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.

G (ii) Seniority : The period of military service mentioned in clause (1) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.

H

(iii)	xxx	xxx	xxx	A
(1)	xxx	xxx	xxx	
(2)	xxx	xxx	xxx	
(3)	xxx	xxx	xxx	B

5. Seniority, promotion, increment pension and leave of Government employees :

The period spent on military service by the Government employee shall count for seniority, promotion, increment and pension in the service or post held by him immediately before his joining military service. A permanent Government employee who renders military service, shall earn leave during such service according to the leave rules applicable to him immediately before his joining military service. A temporary Government employee shall during military service be governed by the military rules in all respects. The employee concerned shall be entitled to proforma promotion in his parent department under the 'next below' rule and also to seniority in higher posts to which he would otherwise have been entitled if he had not joined military service."

A reading of these Rules and Punjab Government Memorandum dated February 28, 1973 would clearly indicate that the period of military service mentioned in clause (i) namely the period spent by the personnel on military service after attaining the minimum age for appointment to any service or post to which he is appointed shall count for his promotion for seniority as far the rules 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules, Volume II.

Rule 5 of the Rules indicates that seniority, promotion, increment, pension and leave of Government employee will be available to any Government employee who had already in service of the State Government but subsequently joined the military service. The entire period spent in the military service will be tagged for the purpose of his seniority, promotion, increment, pension and leave of the Government employee.

The question then is : whether the respondent is entitled to both the benefits? It is seen that though the respondent had joined the State Services

A as Assistant Sub-Inspector (Professional Tax) Finance Department on November 7, 1962, later he joined military service on October 26, 1963. He did not join, after release from the army, in the post as Sub-Inspector (Professional Tax) Finance Department. Resultantly, Rule 5 has no application in that behalf. After his release from the Army on September 19, 1969, he had applied for and was selected as Taxation Inspector and joined the services on January 29, 1970. As a consequence, he was given the benefit of seniority under Rule 4(II) from October 26, 1963. While he was continuing in service, Direct Recruitment was advertised for appointment as Assistant Excise and Tax Officer. He had applied for and was selected, he was appointed as Assistant Excise and Tax Officer in 1972. As he had already availed of the benefit of tagging his services as taxation Inspector and the services rendered in the Military as a Taxation Officer from October 26, 1963 to September 19, 1969, he is not eligible to again claim for tagging the same period when he was directly recruited as Assistant Excise and Tax Officer since he has already availed the benefit and benefit stood exhausted. This question was considered by this Court in *S.B. Dogra v. State of Himachal Pradesh and Ors.*, [1992] 4 SCC 455 at page 461. This Court had held thus :

E "The two petitioners in that case had served the Indian Army for more than five years before they joined the Haryana Government as Assistant Engineers against posts reserved for ex-emergency Commissioned Officers. The Government of Punjab had before the formation of the State of Haryana made statutory rules under Article 309 of the Constitution called the Punjab National Emergency (Concession) Rules, 1965. Rule 2 defined 'military service' to *inter alia* mean enrolled or commissioned service in any of the three wings of the Indian Armed Forces rendered by a person "during the period of operation of the proclamation of emergency" made by the President on October 26, 1962. Rule 3 provided for the relaxation of the requirements of age and qualification with which we are not concerned in the present case. Rule 4(ii) which is relevant for our purpose provided thus :

H "4. (ii) Seniority : The period of military service mentioned in clause (i) shall taken into consideration for the purpose of determining the seniority of a person who has rendered military service."

This concession was, however, admissible on first appointment only. Rule 5 further provided that the period spent on military service shall count for seniority, promotion, increment and pension in the service or post held by him immediately before his joining military service. Thus that two petitioners became entitled to have their seniority fixed according to the above rules on their appointment as Assistant Engineers. However, the gradation list prepared by the Government did not reflect the benefit of military service weightage as per these rules. The two petitioners alleged that the State of Haryana with a view to deny the benefit to them amended the rules retrospectively and added a proviso as under :

"Provided that a person who has availed of concession under sub-rule (3) of Rule 3 shall not be entitled to the concession under this clause."

By notification dated August 9, 1976, the definition of 'military service' was amended which amendment was challenged along with other grievances in the High Court. However, both the writ petitions were dismissed which gave rise to the appeal, the judgment in which case was relied on by the Tribunal. The core question which arose for consideration by this Court was whether the amended rule was constitutionally valid even though it was made applicable retrospectively which had the effect of taking away vested rights. This Court struck down the amended Rule 4(ii) as well as the notification by which the definition of the expression 'military service' was altered. It will thus be seen that the essential question was not regarding the actual fixation of seniority. The note below the advertisement and the language of the unamended definition of the expression 'military service' read with Rule (ii) made it clear that the service referred to was the one rendered during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution on October 26, 1962. It will become immediately apparent on a mere comparison of the 1965 Punjab Rules, particularly the definition clause read with Rule 4(ii), with Rule 5(1) of the 1972 Rules that the language of the two rules is not identical and while the former limits its scope to "during the period of operation of the proclamation of emergency", there are no such words of limitation to be

A found in Rule 5(1) of the 1972 Rules nor has such an inference
been attempted to be drawn from other provisions in the 1972
Rules. The Tribunal was, therefore, in error in resting its decision
on the ratio of A.S. Parmar case which turned on the language of
the Punjab rules applicable to Haryana which are not shown to be
B in *pari materia* with the Himachal Pradesh rules. The Tribunal was,
therefore, wrong in confining the benefit under Rule 5(1) to the
period of Dogra's actual service in the Army during the emergen-
cy."

C This Court had held that this concession was, however, admissible
for first appointment. Only Rule 5 provide that the military service shall
count for seniority promotion, increment and pension in the service or post
held by him immediately before he joined the military service. Thus the
petitioners therein became entitled to have seniority first according to the
above rules on the post of Assistant Sub-Inspector .

D Since he has already availed of all the benefits of seniority as Taxa-
tion Inspector and got tagged to his service the services rendered in the
military service between October 26, 1963 to September 19, 1969 as Taxa-
tion Inspector, the same period cannot be availed of in his subsequent
appointment though in a higher cadre, namely, the gazette cadre Assistant
E Excise and Taxation Officer.

The appeal is accordingly allowed and the order of the High Court
stands set aside. The respondent's claim will be determined in accordance
with the rule. The writ petition is accordingly disposed of. No costs.

R.P.

Appeal allowed.