IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14798-2000 (O&M)
Reserved on: 25.07.2025
Pronounced on: 01.08.2025

Gursewak Singh .....Petitioner

Versus

State of Punjab and others ....Respondents

CORAM: HON'BLE MR.JUSTICE JAGMOHAN BANSAL

Present: Mr. Sushane Puri, Advocate,
for Mr. K.G. Chaudhary, Advocate,
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 03.04.2000 (Annexure P-4) whereby respondent has denied his claim of seniority. He is further seeking direction to extend him benefits of military service rendered with Indian Navy from 18.04.1964 to 17.04.1974.

2. The petitioner joined Indian Navy on 18.04.1964. His appointment was in terms of The Naval Ceremonial, Conditions of Service and Miscellaneous Regulations, 1963 (in short '1963 Regulations'). As per Regulation 268 read with 269 of said Regulations, continuous service of direct entry of sailors is 10 years. Regulation 269 provides that continuous service sailors of all branches shall be liable for a further 10 years in the Indian Fleet Reserve. The petitioner was discharged on 17.04.1974 by Indian Navy on account of expiry of engagement. The President of India on 26.10.1962 declared National Emergency. Armed Forces made

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recruitments and ones willing to join were offered incentives. Punjab Government introduced Punjab Government National Emergency (Concession) Rules, 1965 (in short '1965 Rules') to recognize and encourage ones who had worked during 1st National Emergency. Rule 2 of 1965 Rules defines the expression 'Military Service'. The said Rule is reproduced as below:-

> *"2. Definition.-- 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 on the 26th October, 1962, or such other service as may hereafter be declared as military training followed by military service shall also be reckoned as military service."*

3. By notification dated 17.06.1968 under proviso to Article 309 of Constitution of India, the State Government introduced Rules titled as 'Demobilized Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968 (in short '1968 Rules'). As per Rule 3 of said Rules, 20% of the non-technical posts to be filled up through direct recruitment were reserved for being filled up by Released Indian Armed Forces Personnel who joined service or were commissioned on or after the 01.11.1962 and were released any time thereafter. Rule 5 provided for seniority to such personnel who were appointed against the vacancies reserved under Rule 3 of 1968 Rules. Rules 3 and 5 read as under:-

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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 Indian Armed Forces Personnel who joined service or were commissioned on or after the 1st day of November, 1962, and are released at any time thereafter.*
>
> *xxxx xxxx xxxx xxxx*
>
> *5(1) Seniority and pay of the candidates who are appointed against the vacancies reserved under rule 3 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"*

4. The petitioner joined Punjab Police Force as ASI on 21.06.1975. He claims that his appointment was made in terms of Rule 3 of 1968 Rules. The State Government by notification dated 20.04.1977 made amendment in 1968 Rules. Rules 2 and 3 were entirely abrogated and substituted as under:-

> *"2. Definition.--In these rules, unless the context otherwise requires:*
>
> *(a) 'Indian Armed Forces Personnel' means the Emergency Commissioned Officers, the Short Service Regular Commissioned Officers, the Junior Commissioned Officers, the Non-Commissioned Officers, and other ranks of the Armed Forces of the Union;*
>
> *(b) 'Non-technical posts' means all posts under the State Government, other than the posts in the Medical and Engineering Services;*
>
> *(c) 'release' (with its grammatical variations means release as per the Scheduled year of release after a spell of services, from the Armed Forces of the Union, but does not include release during or at the end of training, or during or at the end of Short Service Commission granted to cover periods of such training prior to being taken in actual service or release on account of*

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misconduct or inefficiency or at the request of a released Indian Armed Forces Personnel himself;

(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:-

(i) Volunteer Reserved Forces Personnel of the Armed Forces of the Union called upon for temporary service; or

(ii) Indian Armed Forces Personnel who, before their appointment against vacancies reserved under these rules,-

(a) are granted permanent commission; or

(b) joined or join a civil service of the Union or a civil service of a State or a civil post under the Union or a State after their release from the Armed Forces of the Union;

xxxx xxxx xxxx xxxx

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

4.1 By aforesaid notification, Rule 7 was inserted which provided that other than appointment, all other matters shall be governed by amended rules. Rule 7 reads as:

"7. Notwithstanding anything contained in the Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-technical Services) (First Amendment) Rules, 1977 (hereinafter referred to as the amending Rules), the appointment if any made under these rules immediately before the commencement of the amending rules shall not be affected, but in respect of matters other than

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appointment, persons so appointed shall be governed by these rules as modified by the amending rules."

5. The amendment by notification dated 20.04.1977 was made effective w.e.f. 28.02.1973, meaning thereby Rules were amended with retrospective effect. The petitioner was appointed prior to amendment. He claimed seniority as per unamended Rules, however, respondent rejected his claim on the ground that as per amended Rules he does not fall within definition of 'Released on Demobilisation'.

6. Mr. Sushane Puri, learned counsel for the petitioner submits that amendment made in 1968 Rules cannot be retrospective. It is settled law that any amendment in Rules cannot take away already created rights. The State Government has amended 1968 Rules by notification dated 20.04.1977, however w.e.f. 28.02.1973. The petitioner joined Punjab Police Force after 1973, however, before 1977, thus, amended provisions were inapplicable to him. As per 1968 Rules entire Navy Service needs to be considered for seniority. The respondent has partially in place of entire considered his navy service. In the alternative, he submits that petitioner was discharged by Indian Navy on completion of 10 years' service. He was initially appointed for 10+10 years. It was choice of Navy to retain for 10 years after completion of initial 10 years' service as Member of Indian Fleet Reserve. The petitioner was not made part of Indian Fleet Reserve, thus, he was discharged on completion of 10 years' service. He did not get emoluments payable during retention as member of Indian Fleet Reserve. In support of his contentions, he relies upon judgment of Supreme Court in *Ex.-Capt. K.C. Arora and another vs. State of Haryana and others, (1984) 3 SCC 281.*

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7. *Per contra*, Mr. Aman Dhir, DAG, Punjab submits that Rules were amended with retrospective effect whereby expression 'released' was clarified. In the 1977 Rules, the expression 'Released on Demobilization' was used. The amendment was retrospective. The petitioner has not challenged the amendment, thus, is bound to follow amended provision. As per amended provisions, benefit of Military service is available only if a person has been released on demobilization. The intention of the State Government was to protect armed personnel who were recruited during emergency, however, were demobilized. The object was not to protect those persons who in the normal course completed their service. The petitioner has already been granted benefits as per 1965 Rules. His claim of seniority as per 1968 Rules is misconceived. In support of his contentions, Mr. Aman Dhir relies upon judgment of this Court in *Inderjit Kaushik vs. Punjab Public Service Commission and another, 1982 (2) SLR 617* and *Kewal Krishan vs. The Managing Director, Punjab State Warehousing Corporation, 2003 (6) SLR 643.*

8. The conceded position emerging from record is that petitioner served Indian Navy from 1964 to 1974. The President of India declared emergency in 1962 which sprawled to 1968. The Punjab State Government made Rules in 1965 to encourage and protect ones who had served armed forces during emergency. Besides 1965 Rules, government introduced 1968 Rules which were amended in 1977. The amendment of 1977 was made retrospective i.e. with effect from 1973. The petitioner joined Punjab Police as ASI in 1975. At the time of his appointment Rules of 1965 as well as 1968 were in force, however, he was adversely affected by amendment of 1977 because it was made effective from 1973. There is

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another officer namely Mann Singh who had approached Central Administrative Tribunal which vide order dated 11.01.2007 in *'Mann Singh Vs. State of Punjab and others', T.A. No. 03-CH of 2002* relying upon judgment of Supreme Court in *K.C. Arora (Supra)* has held that amendment of 1977 cannot take away rights of already appointed personnel.

9. The President of India declared National Emergency on 26.10.1962 which continued till 10.01.1968. The petitioner was discharged from Navy on 17.04.1974. He joined Punjab Police Force as temporary ASI on 21.06.1975. He was given benefit of Military Service from 01.03.1965 to 10.03.1968 respectively. He was assigned deemed seniority in the rank of ASI and SI with effect from 11.08.1972 and 26.04.1978 by DIG, Patiala Range Patiala. He was given deemed date of promotion as Inspector with effect from 01.10.1985. He was given deemed date of promotion as DSP with effect from 24.11.1989 vide Government Notification dated 21.03.1994. His name was approved in List 'G' by Dy. Inspector General of Police, Patiala and confirmed in the Rank of DSP with effect from 01.04.1992.

10. The State Government at the first instance promulgated 1965 Rules. These Rules came into force with effect from 20.07.1965. As per Rule 4, period of military service was to be counted for increments, seniority and pension. The expression 'military service' has been defined under Rule 2. As per said Rule, the service rendered by person during period of operation of proclamation of Emergency on 26.10.1962 shall be military service. The petitioner had joined Indian Navy in 1964 and first Emergency continued till 10.01.1968. As per 1965 as well as 1968 Rules,

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every person discharged from Military Service was entitled to benefit of reservation, seniority, increments and pension. The State Government vide notification dated 20.04.1977 inserted definition of "Released Indian Armed Forces Personnel". The expression 'released' was also defined in the Rules. The amendment was made w.e.f. 28.02.1973. The petitioner had joined Punjab Police on 21.06.1975. Thus, his appointment was liable to be governed by amended Rules. As per amended rules, the persons who are released on demobilization are entitled to benefit of 1968 Rules. The petitioner is claiming that he was released on demobilization, thus, he was entitled to benefit of seniority as per 1968 Rules.

11. The Government of Punjab in exercise of power conferred by proviso to Article 309 framed 1965 and 1968 Rules. The amendment was made in those Rules by notification dated 20.04.1977. The amendment indubitably was retrospective. The amended provision came into force with effect from 28.02.1973. The petitioner was released from Indian Navy in 1974 and he joined Punjab Police in 1975, thus, amendment of 1977 was applicable to him. Undisputedly, the petitioner has not challenged the said amendment. The amendment was neither carried out by way of instructions nor was the amendment in instructions, whereas amendment was made in exercise of power conferred by proviso to Article 309 and it was made in the Rules framed under said Article. The Rules framed by Governor in exercise of power conferred by proviso to Article 309 are as good as legislation made by State Legislature. The Rules framed under Article 309 cannot be treated as rules framed under a particular statute. The petitioner has not challenged applicability of 1977 amendment from retrospective effect. This Court in the absence of

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challenge to Rules particularly framed under Article 309 cannot ignore amended Rules. It is settled proposition of law that Legislature can make amendments with retrospective effect. Unless and until retrospective amendment is violative of fundamental rights guaranteed by Constitution of India, cannot be ignored. The retrospective amendment is not under challenge, thus, this Court is bound to apply amended provisions to the instant case.

12. The petitioner was appointed in 1975. He was granted benefit of military service rendered from 01.03.1965 to 10.01.1968 towards increment and seniority. He was promoted time to time from the Rank of ASI. He was adorned with rank of DSP w.e.f. 24.11.1989 and his said rank was confirmed w.e.f. 01.04.1992. The petitioner was granted benefit of appointment and thereafter seniority and increments. Despite those benefits, he is claiming that his entire service from 1964 to 1974 with Indian Navy ought to be counted for the purpose of seniority.

13. The petitioner is claiming that he was discharged on completion of 10 years' service whereas he could be retained for next 10 years as per Regulation 269 of 1963 Regulations. He could be made part of Indian Fleet Reserve. Had he been made part of Indian Fleet Reserve, he would have been entitled to salary for next 10 years as well as pension on completion of 20 years' service. He was discharged on completion of 10 years, thus, he was not extended pension. He falls within the expression 'released on demobilization'.

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14. The concept of release on demobilization has been discussed by Division Bench of this Court in ***Inderjit Kaushik (supra)***. The Court has specifically held that discharge on completion of service cannot be treated as demobilization. Demobilization is an entirely different concept. Demobilization principally means reduction of force from war basis to peace basis. It cannot be equivalent to retirement on superannuation. The Legislature has deliberately introduced concept of demobilization. In the unamended provisions expression 'release' was used. The substitution of simpliciter expression 'release' with 'released on demobilization' carries some objective. The word specifically used by Legislature cannot be declared superfluous. The relevant extracts of the judgment in ***Inderjit Kaushik (supra)*** are reproduced as below:-

> *9. What next calls for consideration is the factum of the meaningful change made in the Rules by the amendment in 1977. As already noticed above, the originally enacted Rules 1968 neither contained any definition of the phrase 'Released Indian Armed Forces Personnel nor did it particularise the mode of such 'release. The original rule 3(l) merely talks of personnel who joined service on Commission on or after the first day of November, 1962 and were released at any time thereafter. By the amendment in 1977, detailed and specific changes were introduced in the Rules by the total substitution of rule 2. A mere look at it shows the maticulous precision with which new definitions have been inserted including therein those of the "Indian Armed Forces Personnel" itself, as also of "release" and in greater detail even of the "scheduled year of release." Plainly enough, the vague concept of 'release' at any time after commissioning on or after the first day of November,1962 has undergone a metamorphosis and apart from other changes, the specific concept of 'released on demobilisation' has been introduced. Not only that, certain categories of release coming within the ambit have been*

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specifically excluded by sub-clauses (i) and (ii) to clause (d) of rule 2 of the Rules. Clearly enough, the framers of the rules, were not indulging in an exercise in futility and obviously intended, to make significant changes by amending the 1968 Rules. The crux of the matter, therefore, is to construe the correct meaning of the phrase 'released on demobilisation. In Corpus Juris Secundum (Volume 26-A) the meaning attributed thereto is as under :-

"Demobilization. - In military Law, the dismissal of an army or body of troops from active service."

Again the dictionary meaning of the word is equally a pointer to the same effect. In Webster's Third New International Dictionary, the meaning of 'demobilization' is as under :- ".....the reduction (as of force, equipment or resources) from a war basis to a peace basis, the disarming of troops previously mobilized; release from the armed services."

10. It would be thus plain that demobilization even if widely construed, cannot become an equivalent of mere retirement on superannuation from defence services. The framers of the Rules deliberately introduced this condition as against a 'release' simpliciter from the Armed Services in the unamended rules. Consequently, a mere discharge on fulfilling the specific conditions of his enrolment in the regular service of the Air Force, in my opinion, cannot be treated as synonymous with release on demobilisation.

11. The aforesaid view is further buttressed on a larger perspective of rule 2(d) of the Rules. The definition does not include within its ambit all and every Indian Armed Forces Personnel, but drastically cuts it down. It first includes only those within its ambit, who were commissioned in the Armed Forces on or after the 1st day of November, 1962 till the 9th day of January, 1968. Clearly, this is related to the proclamation of the emergency made by the President of India under Article 352 of the Constitution on October 26, 1962 in the wake of the Chinese aggression at that time. This had put the country on a virtual war footing which continued for a considerable time and this later merged again with the tension

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on the western front culminating in the Indo-Pakistan war of 1965. It is in this context that the second date of the tenth day of January, 1968 has relevance. Clearly enough, the definition, therefore, pertains to the Indian Armed Forces Personnel who were mobilised during the declaration of emergency and then demobilised thereafter. The provision was enacted to give benefit to those demobilised consequent upon the reduction of Armed Forces from a war-basis to a peace basis thereafter. A somewhat similar matter had come up before the Full Bench in ***Dei Chand Phaugat v. State of Haryana, 1980 (2) ILR Punjab and Haryana 252****, wherein, it was held as under :-*

> *"To conclude, I am of the view that the volunteers who willingly come forward to render military service, in times of war, and those of emergency form a distinct class and the respondent-State was fully within its rights to confer the benefits and concessions of the statutory rules on this limited class. The classification rests on a clearly intelligible differentia and has a direct nexus with the object and purpose sought to be achieved by the Rules. -".*
>
> *It would appear that therein also the framers of the Rules primarily intended to give the benefit to those valiant volunteers who had willingly answered the call to arms in case of war and emergency and had subsequently been demobilised with the return of normalcy. This view gets added support from the stand of the respondent-State and the following averment in the written statement :-*
>
> > *"...The petitioner had not been released on demobilization under the phased programme of demobilization approved by the Government of India, Ministry of Defence."*

12. In fairness to the learned counsel for the petitioners, Mr. R.S. Mongia and Mr. J.L. Gupta, I would notice their stand that 'released on demobilization' includes within, its ambit superannuation discharge, release or dismissal and indeed any mode of going out of the Armed Forces. In

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essence, it was contended that the word demobilization was a mere surplusage and every and any withdrawal from the Armed Forces Personnel, was within the definition. It is not easy to accede to a contention of this kind. This is plainly violative of the settled canon of construction that a meaning must be attributed to every word of the statute unless the strongest reasons point to the contrary. Herein, far from there being any such reason, it is significant that these words along with other significant changes had been deliberately inserted by the Amendment of 1977 in order to deliberately cut down the generality of every kind of release after commissioning as earlier. There is thus no option but to reject the contention of the learned counsel for the petitioners.

13. To conclude, it is held that an Ex-Serviceman discharged on fulfilling the conditions of his enrolment under rule 15(2)(b) of the Air Force Rules, 1969 does not come within the ambit of an Indian Armed Forces Personnel released on demobilization under rule 2(d) of the Rules. The answer to the question, posed at the out-set, is rendered in the negative.

14. Applying the above, it is plain that the petitioners would not come within the ambit of rule 2(d) of the Rules and would consequently be ineligible for the benefits accorded thereby. The respondents were justified in excluding them from consideration against the reserved vacancies. All the three writ petitions are, therefore, without merit and are hereby dismissed. The parties are, however, left to bear their own costs.

15. The petitioner was appointed in terms of provisions of Navy Act, 1957. Section 15 provides for tenure of service and Section 16 for discharge on the expiry of engagement period. Sections 15 to 17 of said Act are reproduced as below:

"15. Tenure of service of officers and sailors.—(1) Every Officer and sailor shall hold office during the pleasure of the President.

(2) Subject to the provisions of this Act and the regulations made thereunder,—

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(a) the Central Government may dismiss or discharge or retire from the naval service any officer or sailor;

(b) the Chief of the Naval Staff or any prescribed officer may dismiss or discharge from the naval service any sailor.

16. Discharge on expiry of engagement.—Subject to the provisions of section 18, a sailor shall be entitled to be discharged at the expiration of the term of service for which he is engaged unless—

(a) such expiration occurs during active service in which case he shall be liable to continue to serve for such further period as may be required by the Chief of the Naval Staff; or

(b) he is re-enrolled in accordance with the regulations made under this Act.

17. Provisions as to discharge.—(1) A sailor entitled to be discharged under section 16 shall be discharged with all convenient speed and in any case within one month of his becoming so entitled:

Provided that where a sailor is serving overseas as the time he becomes entitled to be discharged he shall be returned to India for the purpose of being discharged with all convenient speed, and in any case within three months of his becoming so entitled:

Provided further that where such enrolled person serving oversea does not desire to return to India, he may be discharged at the place where he is at the time.

(2) Every sailor discharged shall be entitled to be conveyed free of cost from any place he may be at the time to any place in India to which he may desire to go.

(3) Notwithstanding anything contained in the preceding sub-sections, an enrolled person shall remain liable to serve until he is duly discharged.

(4) Every sailor who is dismissed, discharged, retired, permitted to resign or released from service shall be furnished by the prescribed officer with a certificate in the language

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which is the mother tongue of such sailor and also in the English language setting forth—

(a) the authority terminating his service;

(b) the cause for such termination; and

(c) the full period of his service in the Indian Navy and the Indian Naval Reserve Forces"

From the perusal of above-quoted Sections, it is evident that every officer and sailor holds office during pleasure of the President. A sailor shall be discharged at the expiry of the term of service for which he is engaged.

From the perusal of petitioner's service book, it is evident that he was discharged on the expiry of engagement period. The relevant extracts of service book read as:-

"17 April, 74 ENGAGEMENT EXPIRED

Service certificate verified up to the date of discharge."

16. Regulations 268 and 269 cited by the petitioner deal with tenure of service. As per Regulation 269 normal period of engagement of a sailor is 10 years. The said period may be extended by 10 years. During the extended period a sailor is made part of Indian Fleet Reserve. Extracts of Regulation 268 and 269 are reproduced as below:-

"268. Engagements. – (1) Boys, Artificer Apprentices and Direct Entry sailors shall be enrolled for Continuous Service as provided in sub-regulation (1) of Regulation 269.

xxxx xxxx xxxx xxxx

269. Continuous Service. - (1) Old Entrants Boys, Artificer Apprentices and Direct Entry sailors may be enrolled for a period calculated to permit a period of 10 years' service to be completed from the date of attaining 17 years of age or from the date of being ranked in the Man's rank on successful

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completion of initial training, whichever is later, provided their services are so long required.

Continuous Service sailors of all Branches shall be liable, if required, for a further 10 years' service in the Indian Fleet Reserve, subject to the provisions of the Regulations for the Indian Fleet Reserve."

From the perusal of Regulation 269, it is evident that it is not mandatory for the Navy to engage any person beyond 10 years. The normal period of engagement is 10 years. He may be retained for further 10 years if he is required. The further retention of 10 years is subject to requirement and retained officers are kept in Indian Fleet Reserve. The petitioner was discharged after 10 years i.e. normal period of service. Thus, for all intents and purposes he was discharged on completion of engagement. He was not released on demobilization.

17. The National Emergency sprawled from 1962 to 1968 and the petitioner was discharged in 1974, means after 6 years from end of emergency. His engagement was for 10 years. The said period expired in 1974. He cannot be heard to claim that he was demobilized. Due to war, the forces were mobilized. As soon as war came to an end, the members of different forces were bound to be demobilized. The benefit of 1968 Rules was intended to be extended to those members of forces who were demobilized. The benefit was not meant for those who were released on the expiry of period of engagement.

18. The petitioner is claiming that he should be given benefit of entire 10 years service rendered with Indian Navy. The petitioner had rendered service in Indian Navy from 1964 to 1974. The National Emergency was declared in 1962 and continued till 1968. The expression 'military service' has been defined under Rule 2 of 1965 Rules.

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19. As per aforesaid said Rule, 'military service' means service rendered by one during the period of operation of proclamation of emergency on 26.10.1962. The petitioner joined Indian Navy in 1964 and was allowed benefit of military service with effect from 18.08.1964 to 01.01.1968. It means the petitioner was extended benefit of military service as per 1965 Rules. The Rules specifically define expression military service, thus, there was no question to extend him benefit of entire service tenure with Indian Navy. His claim was contrary to definition of military service.

20. The petitioner has relied upon order dated 11.01.2007 passed by Central Administrative Tribunal, Chandigarh Bench in the case of ***Mann Singh (supra)***. The facts in case of *Mann Singh* are identical to the case of the petitioner. He was considered and appointed as member of Indian Police Force. Thus, his case was relegated to Central Administrative Tribunal. The Tribunal has allowed petition of *Mann Singh* on the ground that retrospective amendment is not applicable to him. The Tribunal has relied upon judgment of Hon'ble Supreme Court in the case of ***K.C. Arora (supra).*** The relevant extracts of order dated 11.01.2007 are reproduced as below:-

> *"23. After perusal of the decision rendered in Inderjit's case (Supra), we find that the ratio of said judgment has no direct bearing on the present case, in the given fact and circumstances as detailed in the pleadings. Thus, the said judgment can be distinguishable for the reasons that in that case of Inderjit, the petitioner has challenged the vires of Rule 2 of the (First Amendment) Rules 1977, to make him eligible for the benefits accorded to the Armed Forces Personnel, whether they were discharged, released or any mode of going out of the Armed Forces, while bringing him within the ambit*

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of word "Demobilisation", which according to him was a mere surplusage and every and any withdrawal from the Armed Forces Personnel was within the definition prior to amendment of these Rules in 1977. Thus, no right was however, accrued in his favour prior to these amending Rules of 1977. He had not got any benefit of unamended Rules before the amending Rules were made applicable with retrospective effect. Therefore, his plea was rejected by the Hon'ble Punjab & Haryana High Court to give him benefit of reservation under these Rules to compete in the Punjab Civil Services (Execution Branch) Competitive examination. He was asking for the rights which were yet to be accrued in his favour.

24. Whereas in the present case applicant was applicant as A.S.I. in 1975 while giving him benefit of reservation under unamended Rules. He was also given consequential benefits of further promotions upto the level of I.P.S. in 1993. Moreso, ever after his retirement, he has been given retiral benefits while counting his past military service from where he has not received any pension. All these benefits & rights have accrued to him by virtue of the Rules in vogue at relevant point of time. Now through Amended Rules, which have been made effective with retrospective effect. in our considered opinion, these rights & benefits already vested and granted to the applicant can not be now taken away, particularly when, no such intention has been shown by the legislature while amending these Rules. The position would have been certainly different, had these benefits were yet to be given to the applicant.

25. Thus, after careful analysis of the matter as discussed hereinabove, though we are not giving any finding on the vires of these Amended Rules yet. we, while following decision rendered in K. C Arora's case (Supra) by Hon'ble Apex Court, hereby hold that in the peculiar facts and circumstances of the present case, Respondents can not take away the benefits already accrued and granted to the applicant long time back prior to amendment of Rules, 1977 to apply them retrospectively. Hence, their action to withdraw such

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> *benefits is held to arbitrary and illegal, thus not sustainable. Consequently, impugned notice (P-10) dated 24.07.2001 of proposal to withdraw these benefits is hereby quashed and set aside. However, it is also made clear that this decision of ours be not taken as precedent to apply it "in rem", as every case has its own distinguished legal & factual aspects."*

21. The judgment of Tribunal is not a binding precedent. The Tribunal has relied upon judgment of Supreme Court in ***K.C. Arora (supra)***. In *K.C. Arora*, the amendment was specifically challenged before the Court. The challenge to retrospective effect was negated by this Court, however, Supreme Court upheld contention of the petitioner. The amendment under challenge was made by State of Haryana.

In the present case, amendment has been made by State of Punjab and it is not under challenge. In the absence of challenged to retrospective amendment of Rules, the judgment of Supreme Court is inapplicable. The Tribunal too considered the fact that applicant has retired, thus, it would not be appropriate to recover benefits already availed by him.

22. Matter needs to be adjudicated in the light of afore-stated facts and legal position. As per petitioner, he was appointed as per 1968 Rules, thus, he is entitled to benefit of seniority as per Rule 5 of 1968 Rules. As per said Rules, entire Navy Service has to be counted for seniority. The respondent is claiming that petitioner was appointed after introduction of 1968 Rules, however, his appointment was not made as per those Rules, thus, he is entitled to seniority as per 1965 Rules. As per 1965 Rules, military service as defined in those Rules has to be counted for seniority. As per Rule 7 introduced by 1977 Notification, except appointment all

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other matters have to be governed by amended rules. As per Rule 5 of 1968 Rules, entire past service has to be counted if appointment is made against vacancies reserved under Rule 3. As per amended Rule 3, benefit of reservation is available only to those persons who have been discharged on demobilisation. There is no evidence on record that petitioner was appointed against reserved post. The petitioner is claiming that he was appointed as per 1968 Rules, however, he has not adduced any evidence to the effect that he was appointed against reserved post in terms of Rule 3. In the absence of appointment under reserved post, he was not entitled to seniority as per 1968 Rules. It is apt to notice here that 1968 Rules were not introduced in supersession of 1965 Rules. Both set of rules remained in force like two beds of the river. From the conjoint reading of both set of rules, it is evident that 1965 Rules were applicable to every member of armed forces who joined armed forces of Union during emergency whereas 1968 rules were applicable to those personnel who joined armed forces during emergency period and were discharged on demobilisation. In case of 1965 rules, service rendered during emergency has to be counted for seniority whereas in case of 1968 rules, entire service rendered with armed forces has to be counted. There is reason for counting entire service for seniority under 1968 rules. In view of amended 1968 rules, benefit is available to those who were discharged on demobilisation. The emergency continued from 1962 to 1968. Thus, maximum period of service with armed forces during emergency could be 6 years which was only hypothetical because ones did not join armed forces the moment emergency was declared. Thus, for all intents and purposes, candidates got benefit of 4-5 years for seniority either under 1965 or 1968 rules. The

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petitioner is claiming that he should be given benefit of 10 years' service under 1968 rules. To claim benefit of entire service under 1968 rules, he was bound to establish that he was appointed against posts reserved under Rule 3 of 1968 rules and he as per amended rules was discharged on demobilisation. Neither has he proved that he was selected by state government under Rule 3 of 1968 rules nor was he discharged on demobilisation by Navy. He has not further challenged amendment of 1968 rules, thus, amended rules are applicable to him. In view of discussion made in preceding paragraphs, it is manifest that he was not discharged on demobilisation, thus, he was not entitled to service benefits emerging from 1968 Rules. Even if it is assumed that he was appointed as per unamended 1968 Rules still he was bound to comply with amended rules because Rule 7 protects appointment made under unamended rules, however, other benefits are available as per amended rules. Language and intent of legislature is plain and clear. The rules either of 1965 or 1968 have extended benefit of service rendered during emergency. There is no intention of the legislature to extend benefit of entire service, thus, petitioner has rightly been extended benefit of service rendered during emergency.

23. Tribunal in the case of Man Singh considered that as he has retired, thus, benefit already availed should not be withdrawn. In the case in hand, the petitioner retired in 2005. He was not considered for IPS cadre. A period of 2 decades from the date of his retirement has passed away. At this belated stage, it would not be appropriate to create retrospective/notional benefits in his favour. It may create undesired

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burden on the State. He had availed number of benefits including recruitment on the basis of his service in Indian Navy.

24. In the wake of above discussion and findings, this court is of the considered opinion that the instant petition deserves to be dismissed and accordingly dismissed.

25. Pending application(s), if any stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

01.08.2025
Deepak DPA

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No

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