
Rajasthan High Court in the case of *Mohan Lal* (supra) are not applicable to the facts to this case.

(6) For the reasons recorded herein above, I do not find any merit in this petition and accordingly, the petition is dismissed. I, however, direct the learned trial Court to treat the application filed by the respondent-applicant under order 37 Rule 4 CPC instead of an application under order 9 Rule 13 CPC and dispose of the same under order 37 Rule 4 CPC. With this direction the petition stands disposed of. The observations made herein above shall not have any bearing on the merits of the case.

J.S.T.

Before R.S. Mongia & S.S. Sudhalkar, JJ

V.K. SEHGAL,—*Petitioner*

versus

UNION OF INDIA & OTHERS,—*Respondents*

C.W.P. 16054 of 1997

20th May, 1998

Constitution of India, 1950—Art. 226—Writ rules—Necessary parties—Petitioner claiming benefit of war service including seniority—Whether persons on whom over the seniority claimed necessary parties.

Held, that the petitioner is not claiming his right over any other person because of any infirmity in the case of that person and basis his case on the rights which are available to him as per law.

(Para 8)

Constitution of India, 1950—Art. 226—Instructions dated 4th December 1959 issued by the Government of India, Ministry of Defence—Benefit of military service—Grant of.

Held, that the petitioner is not a military pensioner and his case is, therefore, different from the persons who have exhausted their right in the military service and retired at the age of superannuation. Therefore, without going further into the question of the applicability of the Rules to the pensioners, we hold that the

petitioner's case is distinguishable from that of the pensioners and he is entitled to the benefit of military service.

(Para 13)

Yogesh Putney, Advocate, *for the petitioner.*

Arun Walia, Advocate, *for respondent No. 1*

R.S. Longia, Advocate, *for respondent Nos. 2 to 4.*

JUDGMENT

S.S. Sudhalkar. J.

(1) The petitioner, who is a Graduate, joined the Indian Army during the first external emergency on January 9, 1964, as a Combatant Clerk. He served during the Pakistan aggression over India in 1965 and was awarded a Raksha Medal and a Samar Sewa star in recognition of his services during the Indo Pak war. He was released from the Army on September 24, 1969, on extreme compassionate grounds. He served the Army for five years eight months and sixteen days. It may be observed that the date of birth of the petitioner is June 18, 1945. Certain posts of Upper Division Clerk were advertised by the Income Tax Department which were to be filled in by conducting examination through Staff Selection Committee. The recruitment and service conditions of the Upper Division Clerk are governed by the Rules known as Income Tax Department Non-gazetted Ministerial Post Recruitment Rules, 1969. The petitioner was fulfilling all the requisite qualifications under the statutory rules for being inducted as Upper Division Clerk excepting age. The petitioner was twenty-four and a half years old whereas the age limit prescribed under the rules was 23 years. It was for this reason that the Regional Employment Exchange Patiala did not sponsor the name of the petitioner for the post. However, there is power of relaxation of the age under the rules for persons belonging to Scheduled caste/Scheduled tribe and other category of persons, i.e. Ex-servicemen etc. The petitioner's age was relaxed and he was allowed to appear in the examination against the Ex-servicemen quota. After being selected, he joined the service in the Income Tax Department as Upper Division Clerk on April 18, 1970.

(2) As per the petitioner, he was entitled to the benefit of Military service rendered by him in the Army during the period

January 9, 1964, to September 24, 1969, according to the instructions issued by the Government of India, Ministry of Defence, in consultation with the Home Ministry dated December 4, 1959. The said instructions read as under :

“SENIORITY

In amplification of the provisions of AI 241/50 and corresponding orders on the Air Force and Navy sides, it has been decided in consultation with the Ministry of Home Affairs that in determining Seniority of Government servants on appointment in civil posts, benefit of all previous service rendered in the same or equivalent post (including service rendered in combatant capacity) should be given and for this purpose the posts should be treated as equivalent if the nature and duties attached to them are similar, irrespective of the rates of pay drawn in the previous posts.

Sd./-

Brij Raj Bahadur

Under Secretary to the Government of India”

(3) It is the petitioner's case that the respondent-Department failed to discharge its duties in granting the benefit of Military service to him under the aforesaid instructions which led him to make several representations including detailed representation dated March 8, 1988, which has been appended as Annexure P-4 to this writ petition. On April 4, 1988, a communication was addressed from the office of Commissioner of Income-tax Patiala to the petitioner (who was then working at Ludhiana) in which it was mentioned that in reference to the petitioner's representation dated March 8, 1988, he should furnish documents/information as asked for in the letter dated April 4, 1988. A copy of that letter has been appended as Annexure P-5. It is further the case of the petitioner that the respondent-Department sat over the matter. After waiting for a reasonable time, the petitioner approached the Central Administrative Tribunal, Chandigarh, by filing O.A. No. 253/Pb. of 1989, seeking a direction that the respondent-Department be directed to grant the benefit of Military service to the petitioner with all consequential benefits. It may be observed here that the petitioner had been promoted as a Head Clerk on March 17, 1987, in normal course and after qualifying the departmental examination, he was further promoted as an Inspector in the year

1991. The aforesaid original application came up for hearing before a Bench of the Central Administrative Tribunal on January 11, 1995, and in view of the written statement filed on behalf of the respondent that the representation of the petitioner was still pending, the O.A. was disposed of by passing the following order (relevant extract) :—

- “2. We have heard Shri Rameshwar Sharma, counsel for the applicant and Shri V.K. Sharma, counsel for the respondents.
3. The respondents in the written statement have stated that the representation submitted by the applicant has been forwarded to the Board of Direct Taxes and no decision has yet been taken. The learned counsel for the respondents stated at the bar that as this case was pending with the Tribunal, an administrative decision was not taken. The learned counsel for the applicant stated that the interest of the applicant will be served if the respondents are directed to decide his representation within a reasonable time.
4. In the above circumstances, we direct the respondents that the representation of the applicant, pending with them for the benefit of military service, be considered and decided according to rules and instructions on the subject and a speaking order be issued within a period of three months from the date of receipt of this order. Thereafter, if the applicant still has a grievance, he will be at liberty to move the Tribunal again.”

(4) Pursuant to the aforesaid directions, the respondents considered the matter and rejected the claim of the petitioner vide order dated November 3, 1995 (copy Annexure P-7). This led the petitioner to file another O.A. bearing No. 399/Pb. of 1996 before the Central Administrative Tribunal, Chandigarh Bench. When the matter had come up before the Tribunal for motion hearing on May 2, 1996, while issuing notice, interim directions were issued that any promotion made by the respondent to the post of Income-tax Officer in future would be subject to the final outcome of the O.A. The Tribunal dismissed the OA vide order dated May 21, 1997, copy Annexure P-9. The petitioner has come up in this writ petition challenging the aforesaid order of the Tribunal dated May 21, 1997, as well as the order of the respondents dated November 3, 1995

(copy Annexure P-7). Notice of motion was issued. Reply has been filed.

(5) The grounds for negating the claim of the petitioner by the Tribunal are :

- (i) That the petitioner has unnecessarily indulged in litigation when there was no case for him to have agitated his grievance after a lapse of 18 years when he had joined as a U.D.C. and had already been promoted as a Head Clerk.
- (ii) The discharge of the petitioner from the Army being on his own request on compassionate ground, he cannot get the benefit of his Military service. This was one of the grounds to distinguish the Karnataka High Court judgment in case of T.P. Thomas which had been cited :
- (iii) That the petitioner had not joined as an Ex-serviceman as there is no averment at any point of time that he got age relaxation for being appointed as U.D.C. In fact he had applied as a direct recruit through open competition along with others in 1970.
- (iv) The petitioner's case is not covered by the instructions referred to above as there are general orders in regard to determination of seniority and re-employed Military persons.

(6) Let us examine the aforesaid grounds for rejecting the claim of the petitioner.

(7) So far as the question of delay is concerned, it may be observed that the Tribunal did not dismiss the O.A. on the ground that it was beyond limitation. Rather when earlier O.A. was filed for claiming the relief of Military service benefit, it was the department which took the objection that the representation of the petitioner was still pending with them. It was the Tribunal which vide order dated January 11, 1995, Annexure P-6 disposed of the O.A. by directing that the representation of the petitioner be decided by passing a speaking order within a period of three months and if the petitioner felt aggrieved by the order, he would be at liberty to move the Tribunal again. In 1988, when the petitioner had made a representation, the respondents vide communication dated November 4, 1988, asked for certain information and had not

thrown out the representation as if it was time-barred or delayed in any manner. The order dated November 3, 1995, passed by the respondents pursuant to the directions of the Tribunal rejecting the representation of the petitioner was not on the ground of any delay or laches or being time-barred. The apex Court in *Santosh Singh v. State of Punjab* (1), had observed that if the High Court had directed the respondents to decide the representation of the petitioner and a writ petition is filed challenging the order of rejection of the representation, the same cannot be dismissed on the ground of delay and laches. As observed above, the department had not rejected the representation on the ground of delay and laches and the same had been decided on merits pursuant to the directions of the Tribunal. Consequently, the ground taken by the Tribunal in rejecting the O.A. on that ground is not well based.

(8) At this stage, we shall deal with one more obstacle argued before us by the respondents, viz, that others whose seniority is likely to be affected are not joined as parties. We have held that the petition is not belated so as to be barred by delay and laches. When this is the position, the question is whether all the other persons should be joined as respondents? This Court in the case of *Shri Pritam Chand v. State of Punjab and another*(2), has held that when benefit of war service is claimed, the benefit is claimed for all persons who rendered military service and others are not necessary party. In the present case also the petitioner is not claiming his right over any other person because of any infirmity in the case of that person, and basis his case on the rights which are available to him as per law.

(9) The second ground that the petitioner had been discharged from the Army on his own request on compassionate ground and, therefore, he cannot get the benefit of Military service under the rules and regulations/instructions also is not well based. Suffice it to observe that where the Legislature had framed a rule making a provision that an Armed Force personnel who gets discharge on his request on compassionate ground is not entitled to benefit of Military service was struck down by the apex Court in *Raj Pal Sharma v. State of Haryana and others* (3). Bench of this Court in *State of Punjab v. Pritam Chand*. L.P.A. No. 401 of 1976(4), had

(1) 1987 (5) SLR 571
(2) 1979 (3) SLR 302
(3) AIR 1985 S.C. 1263
(4) 1988 (3) SLR 582

upheld such a provision but that judgment stands overruled by the apex Court in C.A. No. 2617 of 1980 decided on September 5, 1984. Consequently, we are of the view that on this ground also the claim of the petitioner could not be rejected by the Tribunal.

(10) So far as ground (iii) for rejecting the claim of the petitioner by the Tribunal is concerned, suffice it to say that it is rather the case of the respondents that the petitioner had been inducted as a Clerk by giving relaxation of age. This relaxation could only be given to the petitioner under rule 4 of the Recruitment Rules either being belonging to Scheduled caste/Scheduled tribe or other categories. The petitioner is neither a Scheduled caste nor a Scheduled tribe but an Ex-serviceman. In reply to paras 10 and 11 of the petition, it has been averred by the respondents as under :

“10 & 11. That as per the service book of the official maintained by the D.D.O. Shri Sehgal joined as UDC in the grade of Rs. 130—300 on 18th April, 1970 (forenoon) at Commissioner of Income Tax Office, Patiala. He was declared medically fit by the C.M.O. Patiala *vide* medical certificate No. 1544 dated 17th April, 1970 as per entry made in his service book. The date of birth of the petitioner is 18th June, 1945 and on the date of joining the age of the official was twenty four and a half years whereas as per the recruitment rules which governed the appointment of the official published in the Gazette of India dated 27th December, 1969, the maximum age limit was 23 years. This implies that the official at the time of joining the department was given relaxation in age in view of proviso to rule 4 of the Recruitment Rules as mentioned above. The said proviso reads as under :—

Method of recruitment, age limit, qualification etc. :

Provided also that the upper age limit specified in column 6 of the Schedule for direct recruits may be relaxed in the case of candidates belonging to Scheduled castes, Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Govt. from time to time”.

(11) Admittedly, the petitioner was given relaxation of age limit when he joined the service with respondents No. 1 to 4. Except

the fact that the petitioner was an ex-serviceman, there was no other ground for relaxation of the age limit. As stated earlier, the petitioner neither belongs to Scheduled Caste nor Scheduled Tribe. Therefore, the contention of the respondents that the petitioner was not recruited as an ex-serviceman, cannot be accepted. No reason has been shown by the respondents as to how otherwise the petitioner was granted the benefit of relaxation of the age limit.

(12) We may observe that in spite of the above observations, even if the question of relaxation of age limit would not have arisen, the petitioner could not have ceased to be an ex-serviceman and if according to Rules or instructions if the petitioner is entitled to the benefit of his service as an ex-serviceman, there is no reason for not granting the same.

(13) As regards point No. 4, the contention of the respondents is that the petitioner is not covered by the instructions regarding seniority referred in para 2 above. It is admitted in paras 14 and 15 of the written-statement to the petition by the respondents that under the Rules, there is provision for grant of benefit of military service towards seniority in case of direct recruits, though it is contended that the petitioner is not entitled to any military service benefits. The respondents have in paras 14 and 15 of the written-statement reproduced the provisions under which the seniority of the direct recruits can be determined. The petitioner was a direct recruit as he was not appointed on the post with respondents No. 1 to 4 by way of promotion. The Tribunal has held that according to the existing instructions in the matter of grant of seniority to re-employed military pensioners, their seniority in the civil posts is to be determined with effect from the date of appointment in the civil post and no benefit of previous military service is to be allowed for the purpose of seniority. We may observe that the petitioner is not a military pensioner and his case is, therefore, different from the persons who have exhausted their right in the military service and retired at the age of superannuation. Therefore, without going further into the question of the applicability of the Rules to the pensioners, we hold that the petitioner's case is distinguishable from that of the pensioners.

(14) A Division Bench of the Karnataka High Court in *Thomas T.P. v. Union of India and another*,⁽⁵⁾ had taken the view that the petitioner under similar circumstances as in the present case was

(5) 1977 (1) Karnataka Law Journal 325

entitled to the benefit of Military service towards seniority. We are in respectful agreement expressed therein. The Tribunal has tried to distinguish this judgment only on the ground that in that case, the petitioner had not been discharged from the Army at his own request or on compassionate ground but had been discharged after completing his term of appointment. As observed earlier, this cannot be a distinguishing feature.

(15) Faced with this situation, learned counsel for the respondent argued that the instructions of 1959 quoted above only apply to a person who after discharge from the Armed Forces is employed in civil service under Defence Ministry. It seems that this point was never taken up before the Tribunal as no reference has been made to this argument by the Tribunal. Even in the written-statement filed on behalf of the respondents in this writ petition, no such point has been specifically raised. Be that as it may, we are of the view that this argument has no substance. After the instructions of 1959, the Defence Ministry itself issued another instruction on June 1, 1963, which reads as under :—

“The copy of the Ministry of Defence Memo No. 10(1)/63/6039/D(Appts) dated 1st June, 1963 addressed to all concerned in the Ministry of Defence headquarters read thus :

In clarification of the provisions of this Ministry's no. 13034/D(Appts) dated December 4, 1959 on the above, it has been decided that persons who were employed in clerical duties in combatant posts and may be re-employed in civil posts under this Ministry in Clerical capacity may be given benefit of their combatant services for seniority in the civil post irrespective of the rates of pay drawn by them in combatant posts. “(emphasis supplied).

(16) The instructions of December 4, 1959 show that the letter was issued by the Ministry of Defence in consultation with the Ministry of Home Affairs. It does not restrict the effect of the instructions to appointments made in any particular Ministry. The instructions of 1963, referred to above, deal with the re-employment in the civil posts under the Ministry of Defence in clerical capacity. As per 1959 instructions referred to above, the benefit of all previous service rendered in the same or equivalent post including service rendered in combatant capacity is reckoned for purpose of seniority.

So far as Defence Ministry is concerned, it issued later instructions of 1963 that if a person has done clerical job as a Combatant, then there need not be any equivalence meaning thereby a further benefit was given to those persons who joined clerical post under the Defence Ministry after being discharged from the Army. They need not show equivalence of their job as Combatant in the Armed Forces. The Later instructions used the expression under this Ministry whereas in the former instructions of 1959, there is no such expression. This would go to show that 1959 instructions are general in nature and not confined only to a civil post under the Defence Ministry. The petitioner was working as a Combatant Clerk in the Armed Forces. The instructions of 1959 were issued after taking a decision in consultation with the Ministry of Home Affairs. If the instructions were to be limited to Ministry of Defence only, no reason is shown for consultation with the Ministry of Home Affairs. Moreover, there is not a single sentence in the instructions of 1959 which would go to show that the same are limited to Ministry of Defence only.

(17) Regarding the benefit of Military service, it was argued that Rules do not provide for such a benefit. The learned counsel for the petitioner on the other hand argued that the instructions of 1959 are the administrative instructions and the petitioner can base his claim on the instructions. In *Sant Ram Sharma v. State of Rajasthan and another* (6), it has been held by the apex Court that if the Rules are silent on any point, the Government can supplement the Rules by instructions. This judgement is a complete answer to the argument.

(18) In view of the above facts, we allow this writ petition and set aside the judgment of the Tribunal and order that the petitioner be given seniority and consequential benefits considering his service in the Indian Army. In peculiar facts and circumstances of this case, the arrears so calculated shall be restricted for a period of three years and two months prior to the filing of the O.A. No. 399-PB/1996 before the Administrative Tribunal.

(19) No costs.

S.C.K.