

**Raj Kumar Verma v. State of Haryana and others**  
(S. S. Sandhawalia, C.J.)

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in the affirmative. The Tribunal was justified in allowing the assessee to raise such a ground which had not been taken before or adjudicated upon by the Income-tax Officer. The assessee shall pay the costs of this reference to the Commissioner of Income-tax.

Prem Chand Jain, J.—I agree with the conclusion.

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**N.K.S.**

*Before S. S. Sandhawalia C.J., and R. N. Mittal, J.*

**RAJ KUMAR VERMA,—Petitioner.**

*versus*

**STATE OF HARYANA and others,—Respondents.**

*Civil Writ Petition No. 3642 of 1978.*

November 23, 1978.

*Punjab Government National Emergency (Concession) Rules 1965—Rule 4(ii)—Interpretation of—Benefit of military service in regard to seniority—Whether available on second or subsequent appointment in public service.*

*Held*, that sub-rules (i), (ii) and (iii) of rule 4 of the Punjab Government National Emergency (Concession) Rules, 1965 are mutually exclusive and are to be read and interpreted independently. Each of these sub-rules deals with a separate situation in the career of a public servant, namely, the issues of increment, seniority and after retirement his pension. There is no warrant to read the provisions of one sub-rule into that of the other. Therefore, reading rule 4(ii) independently there is not even the remotest inkling either expressly or by necessary intendment that the benefit of military service with regard to seniority is to be circumscribed to the first appointment only. Wherever the framers of the rules wished to confine the benefit of this military service only on the first appointment, they have expressly said so. Nothing having been said with regard to the benefit of military service in relation to seniority, it is plain that the same could not be restricted or cut down by a process

of interpretation to the stage of first appointment only. Thus, the benefit of military service under rule 4(ii) of the Rules is available to an Ex-serviceman on his second or subsequent appointment in an altogether different public service. (Paras 6, 7 and 10).

*Petition under Articles 226/227 of the Constitution of India, praying that :*

- (i) *a writ in the nature of Mandamus directing the respondent to give the petitioner the benefit of his military service towards fixation of his seniority in the Haryana Civil Service (Executive Branch), be issued ;*
- (ii) *a writ in the nature of Mandamus directing the respondent to give the benefit prayed for to the petitioner, as he is entitled to such benefit under the Punjab Government National Emergency (Concession) Rules, 1965, as applicable to the State of Haryana.*
- (iii) *any other writ, order or direction which this Hon'ble Court may deem fit in the circumstances of the case, be issued ;*
- (iv) *costs of the petition, be awarded to the petitioner.*

Kuldip Singh, Advocate with R. S. Mongia, Advocate, for the Petitioner.

Naubat Singh, Sr. D.A.G., Haryana and B. S. Malik, Advocate, for the respondent.

#### JUDGMENT

S. S. Sandhwalia, C.J.

(1) Whether the benefit of military service with regard to seniority under rule 4(ii) of the Punjab Government National Emergency (Concession) Rules, 1965, is available only once on the first appointment to public service is the significant question which falls for determination in this writ petition directly admitted to a hearing by the Division Bench.

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2. During the Indo-Chinese War in the year 1962 the petitioner offered himself for military service and on selection for the Emergency Commission after the necessary training he was commissioned on the 3rd of May, 1964. He had later occasion to serve in the Indo-Pakistan War of 1965 and was ultimately released from military service on the 1st of August, 1969. The petitioner was, therefore, immediately compelled to seek some employment and he applied for and was selected as a Deputy Superintendent Jails against a post reserved for Ex-Servicemen. Whilst serving in the said capacity the petitioner appeared for the Haryana Civil Service (Executive Branch) Examination in the year 1973 and again competed against a vacancy reserved for released military personnel. The petitioner was selected and appointed to Haryana Civil Service against the said reserved vacancy and joined the post in July, 1974. He continues to serve in the same cadre.

3. In order to effectuate the promises extended to those offering themselves for military service at the time of peril in War, the Punjab Government framed statutory rules under Article 309 of the Constitution of India called the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter called the Rules). Under rule 4(f) thereof the petitioner claimed the benefit of his military service towards the fixation of his seniority in the Haryana Civil Service (Executive Branch) and made numerous representations which went un-heeded by the respondent-State. He then preferred Civil Writ Petition No. 219 of 1978 which was dismissed as premature because of the stand of the respondent-State that the representations of the petitioner with regard to his seniority were as yet under consideration and it was undertaken on their behalf that these would be decided within three months. However, on the 18th of April, 1978,—vide annexure P. 1, the representation of the petitioner was rejected primarily on the ground that he had been earlier given the benefit of military service towards seniority when he joined the post in the Jail Department and he could not, therefore, be accorded the same benefit again. The stand taken on behalf of the respondent, both at that stage and in contesting the present writ petition clearly is that the period of approved military service is to be taken into consideration only on first appointment and not on subsequent appointments in public service with regard to all the three matters of increments, seniority and pension.

4. It is plain that the issue must turn on the true interpretation of rule 4(ii) and it is, therefore, necessary to read the whole of the rule—

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

(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 and 10 and 3,11 of the Punjab Civil Services Rules, Vol. II. *This concession shall, however, be admissible only on first appointment.*

(ii) *Seniority* : The period of military service mentioned in clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service, provided that a person who has availed of concessions under sub-Rule (3) of Rule, 3, shall not be entitled to the concession under this clause (Letter No. 2259-2 FS II-76/7273, dated 22nd March, 1976.

(iii) *Pension* : The period of military service mentioned in clause (i) shall count towards pension only in the case of appointments to permanent services or posts under the Government subject to the following conditions :—

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

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

(c) The period, if any, between the date of discharge from military service and the date of appointment to any senior post under the Government shall count for

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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.”

5. Now the significant argument on behalf of the petitioner is that sub-rules (i), (ii) and (iii) of rule 4 aforesaid are mutually exclusive and are to be read and interpreted independently. It has been rightly contended that each of these sub-rules deals with a separate situation in the career of a public servant, namely, the issues of increment, seniority and after retirement his pension. It was plausibly submitted that there was no warrant to read the provisions of one sub-rule into that of the other. Therefore, reading rule 4(ii) independently there is not even the remotest inkling either expressly or by necessary intendment that the benefit of military service with regard to seniority is to be circumscribed to the first appointment only.

6. It is then worthy of notice that wherever the framers of the rules wished to confine the benefit of this military service only on the first appointment they have expressly said so. A reference is obviously called for to the preceding sub-rule (i) which in no uncertain terms lays down that the increments accruing from the period of military service would be admissible only on first appointment. No such qualification even remotely appears with regard to seniority in sub-rule (ii). Counsel was, therefore, on firm ground in contending that the authors of the rules were alive to this aspect of the matter and when they expressly confined the benefit of military service with regard to increments only on first appointment, there is no reason to extend the same to sub-rules (ii) and (iii) where no such terminology has been used. In this context a meaningful argument has also been built around the amendment introduced in sub-rule (ii),—*vide* letter No. 2258-2 FS II-76/7273, dated 22nd of March, 1976. By the addition of the words made by this amendment it has been laid down that those who had availed the benefit with regard to the qualification under sub-rule (3) of rule 3 would not be entitled again to the benefit of seniority thereunder. Mr Kuldip Singh was, therefore, able to plausibly contend that wherever the framers of the Rules wished to limit or exclude the benefit of military service they in

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terms had said so. Nothing having been said with regard to the benefit of military service in relation to seniority it is plain that the same could not be restricted or cut down by a process of interpretation to the stage of first appointment only.

7. It was then said that if the intent of the framers of the Rules was that the benefit of military service would accrue only on the first appointment with regard to all the three aspects of increments, seniority and pension, then the same would have obviously found mention in the very opening part of Rule 4 and not individually as in sub-rule (i) thereof. In that case Rule 4 would have been plainly termed as—

“Increments, seniority and pension; period of military service shall count for increments, seniority and pension only on first appointment as under :—

- |       |   |   |   |   |
|-------|---|---|---|---|
| (i)   | * | * | * | * |
| (ii)  | * | * | * | ” |
| (iii) | * | * | * | ” |

However, the rule-makers having not resorted to this plain canon of draftsmanship, it necessarily follows that the limitation with regard to first appointment was deliberately confined originally to increments in sub-rule (i) and later with regard to the qualification by the amendment of 22nd of March, 1976, already noticed to sub-rule (ii).

8. The plain language of rule 4(ii) and canons of interpretation apart, it appears to me that there exists a clear rationale also for confining the benefit of military service on first appointment to increments only whilst not extending it to the realm of seniority as well. It is plain that increments being a monetary benefit having been once obtained by the Ex-Servicemen, the framers of the rule might well have thought it fit to confine it at one stage only, namely, that of first appointment. This monetary benefit having once accrued would neither be forfeited nor be refundable. However, as the present case highlights it is plain that the benefit of seniority having been obtained on first appointment in a service would be completely lost when the Ex-Serviceman goes out thereof into a new service

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altogether. The petitioner herein joined the jails Department in 1970, and hardly three years later he was selected in the Haryana Civil Service (Executive Branch). On the argument of the respondents he would thereby completely lose the benefit of his military service for the purpose of seniority because the same could obviously not be carried from one service to another. If he is, therefore, not allowed any added seniority in the subsequent service the alleged benefit of military service in this context would become illusory. In the larger perspective it also calls for notice that an Ex-Serviceman immediately on release must inevitably look for public employment forthwith. If the rule of seniority is confined to first appointment, it would obviously work hardship because the Ex-Serviceman having availed it once for a relatively lower rank of service would thereafter be debarred for ever from availing it later. The view I am inclined to take finds considerable support from the following observations made by the Full Bench in *Harbhajan Singh v. The State of Punjab and another* (1), wherein also the Bench was considering a statute in favour of Ex-Servicemen—

“In the view that we have taken, it is unnecessary for us to go into the question of the vires of Rule 3(iii), (cc), (ii) (b), we would, however, like to add that the rule does appear to our mind to be unreasonable. These rules prescribing a quota of reservation for released Armed Forces Personnel are in force for a limited period only. If during that period a person is otherwise eligible for appointment, we see no justice in excluding him from appointment on the ground that he accepted some other employment in the meanwhile. It looks as if a person belonging to the category of released Armed Forces Personnel accepts an inferior post he does so on pain of losing eligibility to a superior post. If no superior post is readily available immediately on his release from the Armed Forces he must wait till such post becomes available and it may never become available. In the meanwhile, he is precluded from accepting an inferior post even to keep his body and soul together. Surely, that is not how we repay our debt to those that readily shed their blood for us.”

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(1) 1977(2) S.L.R. 180.

9. In fairness to Mr. Naubat Singh for the State and Shri B. S. Malik for the private respondents, I may notice that they had sought to contend that there appeared to be a gap in the Rules which had been adequately filled in by Government instructions. A reference was made to annexure R. 1/1, dated the 18th of May, 1975, in which an interpretation sought to be canvassed on behalf of the respondent-State that the benefit of seniority was available only on first appointment was placed by the authorities. On these premises reliance was placed on *Sant Ram Sharma v. State of Rajasthan (2)*, I am unable to detect any merit in this regard. Firstly, annexure R. 1/1 cannot possibly be termed as an instruction issued by the executive in pursuance of the executive power vested in it by the Constitution of India. On the face of it, it does not even refer in terms to rule 4(ii) and in fact has reference to an obscure communication in para 19(b) of the Haryana Government Circular Letter No. 88-4GS-11-66/9554, dated the 21st April, 1966. Again it itself mentions that the same is merely for the purpose of the clarification of the para aforesaid. This apart, on the construction we have placed on the existing provisions of rule 4, it is plain that no Government instruction can be framed contrary thereto or in effect to supersede its provisions.

10. To conclude, the answer to the question posed at the very outset must be returned in the negative. I hold that the benefit of military service under rule 4 (ii) is available to a Ex-Serviceman on his second or subsequent appointment in an altogether different public service.

11. In view of the above, the present writ petition is hereby allowed. Annexure P. 1 is quashed and the respondent-State is directed to fix the seniority of the petitioner by according him the benefit of his military service in the light of the observations aforesaid. There will be no order as to costs.

R. N. Mittal, J.—I agree.

N.K.S.

(2) A.I.R. 1967 S.C. 1910.