

CWP No.155 of 2006.

31.3.2008. Present: Mr.R.M.Bisht, Dy.A.G. for the petitioners.
Mr.Sanjay Jaswal, counsel for the respondent.

This petition is directed against the order of the learned H.P. Administrative Tribunal dated 30th May, 1997 passed in O.A. No.1618 of 1990. The respondent herein was the original applicant before the learned Tribunal. By means of the impugned order he was granted the benefit of the military service rendered by him for the purpose of pay and seniority. The Tribunal granted these benefits to the respondent solely on the basis of the order of the Full Bench of the Tribunal rendered in case **Kali Dass and others vs. State of H.P. OA No.224 of 1987**. Admittedly this order of the Full Bench of the Tribunal has been set-aside by the Apex Court in **State of H.P. and another vs. Piar Singh, 2002 (6) SLR 24**.

The petition is admittedly highly belated. It was filed on 7th February, 2006. Normally such a belated petition should not have been entertained by us. However, the Director General of Police filed an affidavit in which it is submitted that after the decision of the Apex Court in **Piar Singh's case** the learned Tribunal dismissed a large number of Original applications and execution petitions and it was under this bonafide erroneous belief that the aforesaid orders were not challenged. This explanation is accepted.

We are also of the view that when the order of the Full Bench of the learned Tribunal has been held to be wrong and erroneous, the ex-servicemen who joined Army before 1.11.1962 would not be entitled to the benefit of their approved military service in the

event of their joining civil service. It would amount to a travesty of justice to grant the benefit to the respondent whereas similarly situated have been denied the same. Therefore, the delay in filing the CWP is condoned.

The order of the learned Tribunal is set-aside in view of the clear-cut verdict of the Apex Court that the benefit of the Demobilized Armed Forces Personnel (Reservation of vacancies in Himachal State Non-Technical Services) Rules, 1972 cannot be granted to those employees who were inducted in the Army prior to 1.11.1962.

The petition is allowed in the aforesaid terms. No costs.

(Deepak Gupta),J.

March 31, 2008.
PV

(Rajiv Sharma),J.