

# **HIGH COURT OF JAMMU AND KASHMIR**

AT JAMMU

LPASW No.41/2007  
LPA SW No.127/2007  
LPASW No.209/2006  
CMA No.106/2006 & 174/2009

Date of order: 20.11.2013

Union of India and ors.

v.

Karan Singh and ors.

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## **Coram:**

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice**  
**Hon'ble Mr. Justice Hasnain Massodi, Judge**

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## **Appearing counsel:**

For the petitioner(s)	:	Mr. R.S.Jamwal, CGSC. Mr. W.S.Nargal, CGSC (in LPASW No.209/2007).
For the respondent(s)	:	Mr. K.S.Johal, Sr. Advocate with Mr. Ashray Choudhary, Advocate.

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| i)  | Whether to be reported<br>Press, Journal/Media | Yes/No. |
| ii) | Whether to be reported in<br>Digest/Journal    | Yes/No. |
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## **M.M.Kumar, CJ**

1. This order shall dispose of three appeals, LPASW Nos.41, 127 of 2007 and 209 of 2006. The matter pertains to the service rendered by the writ petitioner-respondents in the Army, in some cases as Grenadiers or on another post and then their transfer to Reserve Establishment. The writ petitioner-respondents were granted reservist pension, however, thereafter they were enrolled in Defence Security Corps. When they joined the Defence Security Corps their reservist pension was suspended as per the provisions of Regulation 267 (d) of the Pension Regulations for the Army Part-I, 1961. On their retirement from the Defence Security Corps they became entitled to club the period of their service as

qualifying service for pension with the service rendered in the Defence Security Corps. In terms of Regulation 267 (d), they have been held entitled to treat previous service as qualifying service for grant of pension/gratuity as per the table specified in Regulation 126.

2. It is well settled that when a person earns pension in one establishment and goes on to another one as a re-employed pensioner then two courses are open to him. He can either ask for suspension of his earlier pension to earn full salary of the post which he holds later or he can draw his salary minus pension. In term of Regulation 267 in the instant case the earlier pensions have to be suspended and on the superannuation from the second spell of employment, the employee would be entitled to count the earlier service as qualifying service for pension clubbing with the services rendered in DSC. Therefore, the view taken by the learned Single Judge does not suffer from any legal infirmity warranting interference of this Court.

3. In view of the National Litigation Policy framed in the year, 2009, reported as (2010) 6 SCC (Jour) 17, such an appeal should have been withdrawn. According to clause VI (D) the following Policy is stipulated:-

- vi. Filing of appeals:
- (D) In service matters, no appeal will be filed in cases where:

- (a) the matter pertains to an individual grievance without any major repercussion;
- (b) **the matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent or financial implications.”**

A perusal of the aforesaid clause would reveal that in service matters no appeal would be filed in cases where *inter alia* the matter pertains to a case of pension or retirement benefits. Such appeals should have been withdrawn by the appellants-Union of India.

4. Therefore, these appeals are absolutely ill advised and are accordingly disposed of with one observation that the writ petitioner-respondents would be entitled to pension and gratuity and release of any other monetary benefits, if any such amount was outstanding on the date of pronouncement of the judgment by the learned Single Judge. These observations have been necessitated for the reason that the appellants had pointed out that in fact the relief claimed by the writ petitioner-respondents had already been granted and there was no cause of action and that no question of interest would arise.

5. The appeals are disposed of.

**(Hasnain Massodi)**  
**Judge**

**(M. M. Kumar)**  
**Chief Justice**

**Jammu,**  
**20.11.2013**  
**Anil Raina, Secy**