

JAGMOHAN SINGH DHILLON ETC.ETC.

v.

SATWANT SINGH & ORS. ETC. ETC.

(Civil Appeal Nos. 4616-4618 of 2010)

MARCH 26, 2021

**[ASHOK BHUSHAN,* S. ABDUL NAZER AND
HEMANT GUPTA, JJ.]**

Army service: Ex-servicemen – Appellant appointed against advertisement issued on 01.05.1982 by appointment order dated 18.03.1986 – Whether the appellant for determination of his seniority was entitled for the benefit of r.4 of 1972 Rules – Held: r.4 of 1972 Rules provides that period of military service rendered by a candidate appointed against reserved vacancy shall count towards fixation of pay and seniority, which provision was no longer continued in r.4 of 1982 Rules – Appellant was appointed after the enforcement of 1982 Rules – Therefore, he is not entitled to claim benefit of military service for purpose of seniority since the benefit of r.4(1) of 1972 Rules was not continued in 1982 Rules – His seniority was to be governed by statutory rules applicable after the enforcement of 1982 Rules – Demobilized Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Service) Executive Branch Rules, 1972 – r.4 – Punjab Recruitment of Ex-servicemen Rules, 1982.

Dismissing the appeals, the Court Held:

1. The 1972 Rules were superseded by another Rules framed under Proviso to Article 309 read with Article 234 and 318 of the Constitution of India, namely, Punjab (Recruitment of Ex-servicemen) Rules, 1982. Rule 4 of 1972 Rules provided that period of military service rendered by a candidate appointed against reserved vacancy shall count towards fixation of pay and seniority, which provision was no longer continued in Rule 4 of 1982 Rules. However, the provision for reservation of vacancies was maintained to the extent of fifteen percent of the vacancies. [Paras 10, 11]
2. The question of determination of seniority comes only after a person enters into service and becomes a member of service. Under 1972 Rules, it cannot be held that the fact that

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vacancies were in existent prior to enforcement of 1982 Rules, and appointment of a person subsequent to enforcement of 1982 Rules, he shall be entitled to the benefit of Rule 4, i.e., to add his military services for the purposes of his seniority, especially when the benefit which was available for the purposes of seniority under Rule 4 of 1972 Rules is no longer continued under 1982 Rules. [Para 15]

3. 1982 Rules specifically repealed the 1972 Rules, thus, the Rule 4 of 1972 Rules which provided for benefit of seniority of Army service was no longer entitled to be counted for seniority for personnel who was appointed after enforcement of 1982 Rules. Under 1982 Rules, there is no indication that the benefit which was available to Armed Forces Personnel under Rule 4 of 1972 Rules are continued or any right has been accrued on the appellant under 1972 Rules which he is entitled to avail regarding seniority. [Paras 16, 19]

R.K. Barwal and others v. State of Himachal Pradesh and others, (2017) 16 SCC 803: [2017] 9 SCR 671 – referred to

4. The Division Bench has rightly taken the view that saving clause under Rule 9(3) does not extend any benefit to the appellant since there is nothing to show that any right of weightage for army services for seniority has already accrued before he joined services. Saving clause in Rule 9(3) cannot be availed by the appellant. [Para 21]
5. The appellant was not entitled to claim benefit of military service for purpose of seniority for appointment to Punjab Civil Service(Executive Branch) since the benefit of Rule 4(1) of 1972 Rules was not continued in 1982 Rules. His seniority was to be governed by statutory rules applicable after the enforcement of 1982 Rules. [Para 23]

Ishwar Singh and others v. State of Punjab in Writ Petition No. 3236 of 1995 – held inapplicable

State of Punjab and other v. Dr. Balbir Bharadwaj, LPA No.168 of 2004, decided on 29.01.2007 – distinguished

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4616-4618 of 2010

From the Judgment and Order dated 28.07.2009 of the High Court of Punjab and Haryana at Chandigarh in LPA No. 19 of 2008 & LPA No. 20 of 2008 and LPA No. 213 of 2007.

Gurminder Singh, Sr. Adv., Guroor Sandhu, Ayush Choudhary, Devanshu Yadav, D. Mahesh Babu, Advs. for the Appellants.

Karan Bharihoke, Ms. Neha Sahai Bharihoke, Siddhant Sharma, Vineet Bhagat, Advs. for the Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. These appeals have been filed against the Division Bench Judgment of High Court of Punjab and Haryana dated 28.07.2009 in LPA No.213 of 2007 with LPA No.177 of 2007. The High Court vide the impugned judgment has allowed the LPA filed by the State of Punjab and set aside the judgment of learned Single Judge and dismissed the writ petitions filed by the appellants before us.
2. Brief facts of the case necessary to be noted for deciding these appeals are:
 - i. The appellants are ex-servicemen, who after being released from the Army were appointed to Punjab Civil Service (Executive Branch). Rules were framed namely Demobilized Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Service) (Executive Branch) Rules, 1972, under which Rules Twenty percent of the vacancies in the Punjab Civil Service (Executive Branch) were to be filled in by direct recruitment from amongst Released Indian Armed Forces Personnel, who joined military service or were commissioned on or after the first day of November, 1962. The vacancies existed under Rules, 1972 for direct recruitment were from 1979 to 1981.
 - ii. Another set of Rules were framed namely Punjab Recruitment of Ex-servicemen Rules, 1982 which were gazetted on 12.02.1982. Fifteen percent of the vacancies to be filled by direct

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appointment were reserved for being filled in the recruitment by ex-servicemen. By 1982 Rules, the Rules 1972 as above mentioned were repealed. An advertisement was published on 01.05.1982 being advertisement No.2 advertising the post of Punjab Civil Service (Executive Branch). The examination was held in the year 1985 and the appellants were appointed vide order dated 18.03.1986 to Punjab Civil Service (Executive Branch). The seniority list was issued in the year 1994 in which seniority of the appellant was fixed at S.No.25 without granting him any benefit of earlier services in the Army.

- iii. The appellant submitted representation against wrong fixation of his seniority. The appellant filed a Writ Petition No.8069 of 2001. In the writ petition, the appellant claimed that his seniority be re-fixed by granting military services benefit in terms of Rule 4 of 1972 Rules. The writ petition of the appellant was taken along with other three writ petitions and allowed by learned Single Judge of the High Court vide its judgment dated 31.07.2007.
- iv. The learned Single Judge held that appellants shall be deemed to be appointed under 1972 Rules and benefits flowing there from shall be admissible to the appellant as per 1972 Rules. The earlier judgment of the High Court dated 08.04.1986 in **Writ Petition No.3236 of 1995, Ishwar Singh and others versus State of Punjab**, was relied by learned Single Judge. Aggrieved against the judgment of learned Single Judge dated 31.07.2007, State of Punjab filed LPA No.213 of 2007. LPA No.19 of 2008 and LPA No.20 of 2008 were decided along-with LPA No.213 of 2007, by judgment and order of the Division Bench dated 28.07.2009. LPA filed by the State of Punjab was allowed. Judgment of the learned Single Judge was set aside and the writ petition filed by the appellant was dismissed. Aggrieved by the judgment of Division Bench, these appeals have been filed.
- 3. We have heard Shri Gurminder Singh, learned senior counsel appearing for the appellant. Shri Karan Bharihoke has appeared on behalf of State of Punjab and Shri Vineet Bhagat has appeared for respondent Nos.1 to 4.

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4. Learned senior counsel for the appellants contends that the vacancies against which appellants were appointed in the year 1986 were vacancies which were all in existence prior to enforcement of 1982 Rules, hence, 1972 Rules were applicable and the appellants were entitled for the benefit of Rule 4, i.e., their seniority is to be determined giving the benefit of military services which should count towards fixation of pay and seniority. It is submitted that learned Single Judge has rightly allowed the writ petition of the appellant.
5. It is further submitted that the High Court vide its judgment dated 08.04.1986 in **Writ Petition No.3236 of 1995, Ishwar Singh and others versus State of Punjab** has already held that for determination of vacancies reserved for Armed Forces Personnel, 1972 Rules shall be applicable and the reservation of vacancies shall be Twenty Percent as per 1972 Rules and not Fifteen Percent as per 1982 Rules. He submits that the judgment has become final and it is not open to State to contend that 1972 Rules shall not be applicable for determining the seniority of the appellant.
6. Learned counsel appearing for the State refuting the submissions of learned counsel for the appellants contends that in the present case, the advertisement was issued after enforcement of 1982 Rules and appellant had applied in pursuance of advertisement which was issued under 1982 Rules and the examination and select list were published thereafter appointing the appellant in the year 1986 only. For determination of the seniority, the appellant cannot rely on 1972 Rules. The benefit which was available under Rule 4 of 1972 Rules is no longer available under 1982 Rules, hence, the seniority of ex-servicemen appointed under 1982 Rules have to be determined as per the Rules applicable to the PCS(Executive), i.e., Punjab Civil Service (Executive Branch) Rules, 1976.
7. Learned counsel for the respondent Nos.1 to 4 submits that respondent Nos.1 to 4 have already retired from the service.
8. We have considered the submissions of learned counsel for the parties and have perused the record.
9. The only question which needs to be considered and answered in this appeal is as to whether the appellant for determination of his seniority was entitled for the benefit of Rule 4 of 1972 Rules. Rule 4 of 1972 Rules provided as follows: -

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4.(1) The period of military service rendered after attaining the minimum age prescribed for appointment to the Punjab Civil Service (Executive Branch), by the candidates appointed against reserved vacancies under rule 2, shall count towards fixation of pay and seniority in the said Service, subject to the condition that –

<p>(a) The date of appointment in the PCS (Executive Branch) in respect of such candidates as are appointed against the reserved vacancies under rule 2 shall be determined on the assumption that they joined the service under the State Government at the first opportunity they had after joining the military service or training prior to the Commission;</p> <p>(b) The inter se seniority of the military personnel determined by the Punjab Public Service Commission shall not be disturbed;</p> <p>(c) a military personnel appointed as a result of an earlier selection shall be senior to a military personnel appointed as a result of subsequent selection irrespective of the period of military service to his credit; and</p> <p>(d) all candidates appointed against the reserved vacancies under rule 2 shall rank below the candidates appointed by direct recruitment in the year to which the former candidates are allotted.”</p>	<p>Fixation of Pay Seniority</p> <p>And retirement benefits</p>
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10. The 1972 Rules were superseded by another Rules framed under Proviso to Article 309 read with Article 234 and 318 of the Constitution of India, namely, Punjab (Recruitment of Ex-servicemen) Rules, 1982. Rule 4 of 1982 Rules is to the following effect: -

4. Reservation of Vacancies.(1) Subject to the provision of rule 3, fifteen percent of the vacancies to be filled in by direct appointment in all the State Civil Services and Posts connected with the affairs of the State of Punjab shall be reserved for being filled in by recruitment of Ex-servicemen;

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“Provided that where an Ex-serviceman is not available for recruitment against a reserved vacancy, such a vacancy shall be reserved to be filled in by recruitment of the wife or one dependent child of an Ex-serviceman, who has neither been recruitment against reserved vacancy nor is eligible to be recruited against such vacancy under these rules;

“Provided further that the total number of reserved vacancies including those reserved for the candidates belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes shall not exceed fifty percent of the posts to be filled in a particular year.”

(2) Where a reserved vacancy remains unfilled for non availability of a person eligible for recruitment under these rules such vacancy may be filled in temporarily from any other source in accordance with the rules regulating the recruitment and the conditions of service of persons appointed to such posts as if the vacancy was not reserved;

Provided that the reserved vacancy so filled in shall be carried forward for the subsequent occasions arising during at least two years in each of which such occasion arises for recruitment, where after the vacancy in question shall be treated as un-reserved.”

11. As noted above, Rule 4 of 1972 Rules provided that period of military service rendered by a candidate appointed against reserved vacancy shall count towards fixation of pay and seniority, which provision was no longer continued in Rule 4 of 1982 Rules, However, the provision for reservation of vacancies was maintained to the extent of fifteen percent of the vacancies. Rule 10 of 1982 Rules has provision of Repeal, which is as follows:-

“10. Repeal – The following rules are hereby repealed-

1. The Punjab Government National Emergency (Concession) Rules, 1965;
2. The Demobilized Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968;
3. The Demobilized Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Services) (Executive Branch) Rules, 1972; and

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4. The Released Indian Armed Forces Personnel (Determination of Eligibility for promotion) Rules, 1977.”
12. From the facts brought on the record, it is clear that the advertisement against which the appellant was appointed was issued on 01.05.1982, i.e., after the enforcement of 1982 Rules. The appellant was appointed in pursuance of the advertisement by appointment order dated 18.03.1986. Although 1972 Rules have been repealed but in the 1982 Rules, as per Rule 9(3), nothing in 1982 rules was to be construed as depriving any person of any right which had accrued under the rules in force immediately before the commencement of the Rules 1982. Before enforcement of 1982 Rules admittedly, 1972 Rules were enforced.
13. The much reliance has been placed by the learned counsel for the appellant on earlier judgment of learned Single Judge in **W.P.No.3236 of 1995, Ishwar Singh and others versus State of Punjab**. In the above case, one of the questions was as to whether for the vacancies which were advertised under 1982 Rules, the reservation for the Armed Forces Personnel shall be twenty percent or fifteen percent and whether the benefit of ex-servicemen as contained in 1982 Rules shall be applicable with respect to vacancies which arose prior to enforcement of 1982 Rules. In paragraph 50 of the judgment, following was observed: -

“50. Both the aforesaid decisions fully support the petitioners for the contention that the reservation quota in the vacancies, which occurred before 12.02.1982 would be 20 percent for the Ex. Servicemen and from 12.02.1982 it would be 15 percent. The carry forward rule under the 1972 rules as well as the 1982 rules till before amendment of 1984 was for a period of four years and it was amended by the 1984 amendment, which came into effect from 30th April, 1984. Therefore, when the advertisements were made on 01.05.1982 for recruitment, the left over vacancies from 1979 upto 1982 had to be taken into consideration and similarly the vacancies which occurred thereafter would also be taken into account for providing the relevant quota of 10 percent or 15 percent, as the case may be. As noted above, on the basis of the posts would be made available to the category of Ex. Servicemen. The vacancies which occurred on or after 30th April,

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1984 would be carried forward on the basis of the 1984 amended rules. Whereas earlier unfilled vacancies would be carried forwarding under the 1972 and 1982 un amended rules..."

14. The above judgment has attained finality. The learned Single Judge took the view that since the vacancies were vacancies from 1979 upto 1982, the twenty percent reservation as provided under 1972 Rules shall govern. The judgment of **Ishwar Singh**, thus, only had laid down with regard to percentage of reservation of the vacancies, which was held to be twenty percent in view of the vacancies occurring prior to the enforcement of 1982 Rules.
15. The above proposition cannot be extended to the determination of the seniority. The question of determination of seniority comes only after a person enters into service and becomes a member of service. Under 1972 Rules, it cannot be held that the fact that vacancies were in existent prior to enforcement of 1982 Rules, and appointment of a person subsequent to enforcement of 1982 Rules, he shall be entitled to the benefit of Rule 4, i.e., to add his military services for the purposes of his seniority, especially when the benefit which was available for the purposes of seniority under Rule 4 of 1972 Rules is no longer continued under 1982 Rules, as noted above.
16. We have noticed that 1982 Rules specifically repealed the 1972 Rules, thus, the Rule 4 of 1972 Rules which provided for benefit of seniority of Army service was no longer entitled to be counted for seniority for personnel who was appointed after enforcement of 1982 Rules. The judgment of **Ishwar Singh** of Punjab and Haryana High Court which only determined the percentage of reserved vacancies which were to be reserved for Army personnel could not be held to be relevant regarding determination of seniority in the facts of the present case.
17. We may notice the judgment of this Court in **R.K. Barwal and others versus State of Himachal Pradesh and others, (2017) 16 SCC 803**. This Court had occasion to consider in the above case Demobilized Armed Forces Personnel (Reservation of Vacancies in the H.P. State Non-Technical Services) Rules, 1972, where Rule 5 provided for counting of approved military service for purpose of determining seniority on joining civilian post. The Court held

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that persons joining Armed Forces during emergency period vis-à-vis persons joining Armed Forces during 'peacetime', there is a reasonable classification and benefit which was available for adding seniority to persons joining Armed Forces during emergency cannot be extended to persons joining Armed Forces during peacetime.

18. This Court held that normal rule of fixing of seniority is with reference to the date of entry into the service and there has to be very weighty reason for departure from this rule. Following observations were made in paragraph 27: -

"27... After all, if the benefit of armed force services rendered is extended to each and every ex-serviceman for the purpose of seniority, it may result in far reaching implications. Examples in this behalf are given by the private respondents, as noted above. This Court cannot shy away from the normal rule of fixing the seniority, as enunciated in the cases of Direct Recruitment Class II Engineering Officer's Association as well as Aghore Nath Dey, i.e. the seniority of an officer in service is determined with reference to the date of his entry in the service, which is consistent with the requirement of Articles 14 and 16 of the Constitution. There have to be very weighty reasons for departure from this rule. Otherwise, it may disturb the equilibrium by making many direct recruits junior to such ex-servicemen even when such direct recruits joined the services in civil posts much earlier than the ex-servicemen. Thus, an exceptional category carved out for giving such a benefit only to those who were commissioned in Armed Forces during war time cannot be extended to each and every ex-serviceman merely because he has served in Armed Forces."

19. Under 1982 Rules, there is no indication that the benefit which was available to Armed Forces Personnel under Rule 4 of 1972 Rules are continued or any right has been accrued on the appellant under 1972 Rules which he is entitled to avail regarding seniority.
20. Learned Single Judge in its judgment dated 31.07.2007 has heavily relied on **Ishwar Singh's case** holding that with regard to reservation of vacancies, i.e., 1972 Rules have been made applicable, the 1972 Rules also need to be applied for determination of seniority. The percentage of vacancies which are reserved for Armed Forces Personnel were held to be calculated as per 1972 Rules since the

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vacancies have occurred prior to 1982 Rules. The above judgment of learned Single Judge in **Ishwar Singh** cannot be relied for determination of seniority which is entirely a different concept and determination of seniority is governed by seniority rules enforced at the time of appointment of the personnel. The view of learned Single Judge that the appellant shall be deemed to be appointed under 1972 Rules cannot be approved.

21. The Division Bench has rightly taken the view that saving clause under Rule 9(3) does not extend any benefit to the appellant since there is nothing to show that any right of weightage for army services for seniority has already accrued before he joined services. Saving clause in Rule 9(3) cannot be availed by the appellant. We fully endorse the above view of the Division Bench taken in the impugned order.
22. Another judgment relied by the appellant is the judgment of Punjab and Haryana High Court in **State of Punjab and other versus Dr. Balbir Bharadwaj, LPA No.168 of 2004**, decided on 29.01.2007 has rightly been distinguished by the Division Bench in the impugned judgment.
23. We, thus, hold that the appellant was not entitled to claim benefit of military service for purpose of seniority for appointment to Punjab Civil Service(Executive Branch) since the benefit of Rule 4(1) of 1972 Rules was not continued in 1982 Rules. His seniority was to be governed by statutory rules applicable after the enforcement of 1982 Rules.
24. We do not find any error in the judgment of the Division Bench of the High Court. The appeals are dismissed.

Headnotes prepared by: Devika Gujral

Result of the case:
Appeals dismissed.