



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
RSA-762-2009 (O&M)

1	The date when the judgment was reserved	22.07.2026
2	The date when the judgment is pronounced	04.08.2026
3	The date when the judgment is uploaded on the website	04.08.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment and reasons thereof.	Not applicable

DULI CHANDAppellant
Versus
STATE OF HARYANA AND ORS.Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Praveen Kumar Rohilla, Advocate for the appellant.

Mr. Raj Partap Singh Brar, AAG, Haryana.

HARKESH MANUJA, J. (ORAL)

1. By way of present appeal, challenge has been laid to the judgment and decree dated 01.10.2008 passed by the learned Additional District Judge, Panipat (hereinafter referred to as "***the First Appellate Court***") whereby the appeal preferred by the plaintiff against the judgment and decree dated 17.08.2007 passed by the learned Civil Judge (Junior Division), Panipat (hereinafter referred to as "***the Trial Court***") dismissing the suit filed at the instance of appellant-plaintiff was dismissed, thus, affirming the judgment of the learned Trial Court.

2. Brief facts necessary for adjudication of the present appeal are that the plaintiff served in the Indian Army from 21.12.1961 to October,

1976 and thereafter joined Haryana Roadways as Conductor on 17.08.1978, retiring on 31.12.1998. It was pleaded that under the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter referred to as "1965 Rules"), military service rendered during the First National Emergency from 26.10.1962 to 10.01.1968 was liable to be counted for seniority and consequential service benefits. Despite repeated representations and legal notice dated 06.05.2004, the defendants declined to grant him military service benefits, including seniority, five years' wartime increments and selection grade. Consequently, the plaintiff instituted suit seeking declaration of his entitlement to the aforesaid benefits along with mandatory injunction.

3. The defendants contested the suit on preliminary grounds of limitation, maintainability and absence of cause of action. On merits, it was pleaded that the plaintiff had joined the Army prior to the proclamation of National Emergency and, therefore, in view of Haryana Government notification dated 04.08.1976 amending Rule 2 of the 1965 Rules, he was not entitled to military service benefits.

4. Upon consideration of the pleadings, the learned Trial Court framed the following issues:

- "1. Whether the plaintiff is entitled for selection grade, seniority benefits and five years war time increment, alongwith interest, as claimed? OPP*
- 2. Whether the suit of the plaintiff is barred by time? OPD*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Relief."*

5. Upon appreciation of evidence, the learned Trial Court dismissed the suit holding that since the plaintiff had joined the Indian

Army before the proclamation of National Emergency and entered Haryana Roadways service after issuance of the notification dated 04.08.1976, he was not entitled to the benefit of the “1965 Rules” as amended. Issues relating to limitation and maintainability were decided against the defendants as they were not pressed during arguments.

6. Aggrieved thereby, the plaintiff preferred the first appeal whereby the learned First Appellate Court vide judgment and decree dated 01.10.2008 affirmed the findings of the learned Trial Court, holding that the benefit under the amended Rules was confined to ex-servicemen who had joined military service during the National Emergency and, therefore, the plaintiff, having joined the Army on 21.12.1961, was not entitled to the claimed benefits. Hence the present Regular Second appeal.

CONTENTIONS:

ON BEHALF OF APPELLANT-PLAINTIFF:

7. Learned counsel for the appellant-plaintiff contended that the learned Courts below erred in denying the benefit of military service to the appellant, since he had rendered service in the Indian Army during the subsistence of the National Emergency from 26.10.1962 to 10.01.1968, and Rule 2 of the 1965 Rules does not, on its plain language, exclude a person merely because his enrolment predates the proclamation of Emergency. It was further contended that the notification dated 04.08.1976/09.08.1976, amending Rule 2, having been declared ultra vires by the Hon'ble Apex Court in ***Ex. Capt. K.C. Arora and others v. State of Haryana, 1984 AIR (SC) 1858***, the unamended Rule 2 alone survives on the statute book, under which the appellant's military service rendered

during the Emergency period is liable to be counted for seniority, wartime increments and selection grade.

ON BEHALF OF RESPONDENTS-DEFENDANTS:

8. *Per contra*, learned State Counsel submits that the judgments and decrees passed by the Courts below being based on proper appreciation of material facts thus, call for no interference and as such, present appeal is liable to be dismissed.

DISCUSSION AND REASONING:

9. I have heard learned counsel for the parties and gone through the paper book and the records of the case.

10. The question that arises for consideration before this Court is:

"Whether the appellant, having enrolled in the Army prior to the proclamation of the National Emergency and having joined civil service only after Rule 2 of the Punjab Government National Emergency (Concession) Rules, 1965 was amended, is entitled to have his military service counted towards seniority and increments under Rule 4 thereof?"

11. In the present case, admittedly, the appellant-plaintiff joined the military services on 21.12.1961, served therein until October 1976 and thereafter joined Haryana Roadways as Conductor on 17.08.1978, retiring on 31.12.1998. His claim is that military service rendered during the operation of the National Emergency, 26.10.1962 to 10.01.1968, be counted for seniority, wartime increments selection grade and he is entitled to the military benefits under the 1965 Rules. Rule 4 of the 1965 Rules, which provides the mechanism for this claim, reads as under:-

"4. Increments, seniority and pension: 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... 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."

11.1 Rule 4 thus counts military service towards seniority and increments only upon the person's first civil appointment, and only if that service qualifies as "*military service*" within the meaning of Rule 2. The Government of Haryana vide Notifications dated 22.03.1976, 09.08.1976 and 05.11.1976 introduced amendments to these Rules. The relevant amendment in the present case is the one bearing GSR No. 182/Const./Article 309/Amend(2)/76, which substituted the definition of "*military service*" in Rule 2. This notification is recorded on the file of the learned Courts below as dated 04.08.1976, and is identified in the judgment of the Hon'ble Apex Court in ***K.C. Arora (supra)*** as dated 09.08.1976; the GSR number being identical in both, it is the same notification. Comparative Chart of Rule 2 of the 1965 Rules (unamended and amended vide notification dated 09.08.1976) being relevant is extracted hereunder:-

<u>UNAMENDED</u>	<u>AMENDED VIDE NOTIFICATION DATED</u> <u>09.08.1976</u>
2. Definition :- For the purpose of these rules, the expression 'military service' means <i>enrolled or commissioned service in any of the three wings</i> of the Indian Armed Forces (including service as a Warrant Officer) rendered by a person during the period of operation of the	2. Definition:- For the purpose of these rules, the expression 'military service' means <i>the service rendered by a person, who had been enrolled or commissioned during the period of operation of the proclamation of emergency made by the President</i>

proclamation of emergency made by the President under Article 352 of the Constitution of India on the 26th October, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as Military Service.	<i>under Article 352 of the Constitution of India on the 26th October, 1962 in any of the three</i> wings of the Indian Armed Forces (including the service as a Warrant Officer), during the period of the said emergency or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service.
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11.2. The distinction between the two versions is significant, since it determines the class of persons to whom the concession under Rule 2 extends. Under the unamended Rule 2, the phrase "*during the period of operation of the proclamation of emergency*" qualified the service rendered. This meant that any military service actually rendered during the Emergency period counted, no matter when the person had enrolled. The amended Rule 2 shifts this qualifier to the point of enrolment or commissioning itself. Under the amended Rule, only a person who was enrolled or commissioned during the Emergency period falls within the definition, whether or not his service continued beyond that period. The appellant, having enrolled on 21.12.1961, before the Emergency was proclaimed on 26.10.1962, does not fall within the amended definition, though his position might arguably have been different under the unamended one.

11.3. It is on this footing that the appellant has sought to rely on the judgment of the Hon'ble Apex Court in ***K.C. Arora (supra)***, contending that the very notification amending Rule 2 stands declared *ultra vires* and cannot, therefore, be pressed against him. In ***K.C. Arora (supra)***, the

notifications dated 22.3.1976 (amending Rule 4(ii)) and 09.08.1976 (amending the definition of "military service" in Rule 2) were under challenge at the instance of ex-army personnel who had joined the State service prior to the notifications. The Hon'ble Apex Court held that immediately on the appointment of the petitioners therein as Assistant Engineers, they became entitled to have their seniority fixed with the benefit of their military service. Following ***State of Gujarat v. Raman Lal Keshav Lal Soni, (1983) 2 SCC 33***, it was held that the Government of Haryana could not take away the accrued rights of the petitioners and appellants before it by amending the Rules with retrospective effect. The operative portion of the judgment reads as under:-

"For the foregoing discussion the writ petitions as well as the appeals are allowed and the orders of the High Court dated October 10, 1980 are quashed and the impugned Rule 4(ii) of the Punjab Government National Emergency (Concessions) Rules, 1965, as amended by the Haryana Government Gazette Notification No. GSR 182/Const./Article 309/Amend(2)/76 dated August 9, 1976 amending the definition of the expression 'military service' in Rule 2, are declared to be ultra vires the Constitution, insofar as they affect prejudicially persons who had acquired rights as stated above. A writ in the nature of mandamus is issued directing respondents 1 and 2 to prepare the seniority list afresh in the light of the decision of this Court taking into consideration the military service rendered by the petitioners as well as the appellants."

12. Applying the ratio of ***K.C. Arora (supra)*** to the facts of the present case, the declaration of invalidity was confined to the extent the amendment affected persons who had already acquired rights, that is, persons who, on the date the amendment came into force, already held a civil appointment under which an entitlement had accrued to them by virtue of the unamended Rule 2. It did not revive the unamended definition

at large, nor for persons who held no such appointment as on that date. The petitioners in ***K.C. Arora (supra)*** had themselves been appointed to civil posts in 1969, 1970 and 1971, well before the notification of 09.08.1976, and it was this pre-existing entitlement that the Court protected. The appellant is not similarly placed. He joined Haryana Roadways only on 17.08.1978, nearly two years after the notification had already come into force; on that date he held no civil post, and consequently no right under the unamended Rule 2 had accrued to him that the amendment could be said to have prejudicially taken away. The amended Rule 2, and not the unamended one, is thus the only version of the Rule that ever governed his case, and its prospective operation, as distinct from its retrospective effect, was left wholly untouched by the declaration in ***K.C. Arora (supra)***. His reliance on that judgment is accordingly misconceived.

12.1. Furthermore, since it is clear that the amended version of Rule 2 alone governed the appellant's case, the position stands equally settled in terms of ***Dei Chand Phaugat v. State of Haryana, 1980 SCC OnLine P&H 91***, wherein the majority opinion of the Hon'ble Full Bench of this Court held that only persons who had joined and rendered service during the Emergency were entitled to the benefit of military service under the 1965 Rules. Since the appellant admittedly joined military service on 21.12.1961, before the proclamation of the Emergency, he cannot be held entitled to any military benefit thereunder.

12.2. Moreover, in similar circumstances, the Hon'ble Apex Court in ***Dhan Singh and others v. State of Haryana, 1991 Supp (2) SCC 190***

considered the case of appellants who had joined the army before 26.10.1962, served through the Emergency and joined State service only after the amendments were introduced. They challenged the amended Rule 2 as violative of Articles 14 and 16. The Hon’ble Apex Court rejected the challenge, holding that persons who joined the army before the Emergency form a distinct class from those who enrolled during it and that this classification has a direct nexus to the object of the Rules and is neither arbitrary nor discriminatory. Their claim was accordingly dismissed. Being a decision of the Hon'ble Apex Court rendered after and considering **K.C. Arora** (supra), **Dhan Singh** (supra) settles that the classification in the amended Rule 2 is constitutionally valid, and the appellant, being on identical facts, is squarely covered by it.

13. In the light of the discussion made hereinabove, the appellant is not entitled to the claimed military benefits under the 1965 Rules.

RELIEF

14. In view of the detailed discussion made hereinabove, finding no illegality or perversity with the concurrent findings recorded by the learned Courts below, there being no misreading or misinterpretation of the pleadings and the material available on record, the present appeal being devoid of merits is thus, **dismissed**.

15. Pending application(s), if any, shall also stand disposed of.

04.08.2026
Tejwinder

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No