

(2000) 10 SC CK 0047

Supreme Court of India

Case No: C.A. No. 499 of 1992 with C.A. No. 500 of 1992

Sukhdev Singh Gill

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Oct. 19, 2000

Acts Referred:

- Army Act, 1950 - Section 113, 114, 116(1), 3, 4(1)
- Constitution of India, 1950 - Article 33, 352
- Punjab Government National Emergency (Concession) Rules, 1965 - Rule 2

Citation: (2000) 87 FLR 951 : (2000) 2 JT 253 Supp : (2000) 7 SCALE 259 : (2000) 8 SCC 492 : (2001) SCC(L&S) 49 : (2000) 4 SCR 292 Supp : (2001) 1 UPLBEC 664

Hon'ble Judges: M.B. Shah, J; M. Jagannadha Rao, J

Bench: Division Bench

Final Decision: dismissed

Judgement

M. Jagannadha Rao, J.

CIVIL APPEAL NO. 499 OF 1992:

1. This is an appeal by Sukhdev Singh Gill who filed Writ Petition No. 6160 of 1987. In the writ petition the appellant unsuccessfully claimed the benefit of military service towards fixation of his seniority in terms of the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter referred to as "the Rules").

2. The appellant joined as Superintendent in General Reserve Engineering Force (hereinafter referred to as G.R.E.F.) on 8-11-1966. He was confirmed in the said post. He rendered the service in this post during the period of external emergency. He therefore, claimed that the Armed Force called by the name G.R.E.F. was an integral part of the Indian Army and that in terms of the above Rules, he was entitled to count the military service rendered by him for the purpose of seniority in the Municipal Administration of the State which was a provincialised service. As the

question of seniority was involved, the impleaded Respondent Nos. 3, 4 & 5 in the writ petition who would be affected if he was given the benefit of military service.

3. Learned Single Judge allowed the writ petition but on appeal the Division Bench of the High Court set aside the said judgment in Letters Patent Appeal No. 1372 of 1988 and dismissed the writ petition. It is against this judgment that this appeal has been preferred.

4. The appellant joined service as a Superintendent in the G.R.E.F. on 8-11-1966 and was discharged sometime before 24-11-1972. He joined the Punjab Agriculture University as a Section Officer and on 7-9-1973, in the Municipal Committee, Ludhiana. In the year 1976 the services of the employees of the Municipal Committee were provincialised and the appellant was posted in the Municipal Corporation, Amritsar. The writ petition relating to seniority was filed in the year 1986 but pending the writ petition, the representation of the appellant was rejected on 3-3-1987. Thereafter, the writ petition was amended challenging the said order dated 3-3-1987.

5. The relevant notification issued under the Punjab Government National Emergency (Concession) Rules, 1965, is dated 20-7-1965 being G.S.R. 160/Const.Art.309/65. Relevant part of material for the purpose of this case reads as follows:

No. G.S.R. 160/Const./Art.309/65- In exercise of the powers conferred by the proviso enabling him in this behalf, the Governor of Punjab is pleased to make the following rules:

1. Short title, commencement and application (1) These rules may be called the Punjab Government National Emergency (Concession) Rules, 1965.

(2) They shall come into force at once.

(3) They shall apply to all classes of services and posts in connection with the affairs of the State of Punjab except Medical and Health services.

2. Definition-- for the purposes of these rules, the expression "military service" means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a warrant officer) rendered by a person during the period of Operation of the Proclamation of Emergency made by the President under Article 352 of the Constitution 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.

6. It is the case of learned senior counsel appearing for the appellant, Shri Rajinder Sachar that the military service defined in Rule 2 in the above notification includes the service rendered by the appellant in the G.R.E.F. and that the said service should

be added to his service in the Municipal Department of the State of Punjab and if that is done, he would be senior to the private respondents. This plea is opposed by Shri Adarsh Goel, learned senior counsel for the private respondent.

7. Therefore, the limited question before us is whether the appellant could be said to have been "enrolled or commissioned" in any of the "three wings" of the Indian Armed Forces (including service as a warrant officer) as required by Rule 2 (first part) or whether the appellant was a member of any other service as might have been declared as military service for the purposes of the said Rules, as required by Rule 2 (second part).

8. So far as the second part of Rule 2 which refers to "such other service as may be declared" as "military service", it is not in dispute that there is no separate notification issued by the Punjab Government, notifying the service in the G.R.E.F. for the purposes of Rule 2 of the said Rules.

9. Under these circumstances, the question is confined to the first part of Rule 2, namely; whether the appellant could be said to have been "enrolled" or "commissioned" in any of the "three services" of the Indian Armed Forces.

10. Learned senior counsel for the appellant relied upon the judgment of this Court in 290628 , where this Court considered the nature of the service in the G.R.E.F. and the applicability of certain provisions of the Army Act, 1950 for the purpose of taking disciplinary action against the Officers of the G.R.E.F. In that judgment this Court exhaustively dealt with the provisions of Article 33 of the Constitution of India and the relevant notification issued by the Government of India under Sections 4(1) and 4(4) of the Army Act, 1950 under SRO 329 dated 23-9-1960. The said notification issued under the Army Act, reads as follows:

SRO 329 dated 23rd September 1960 In exercise of the powers conferred by Sub-section (1) and (4) of Section 4 of the Army Act, 1950 (46 of 1950), the Central Government hereby:

(a) applies to the General Reserve Engineer Force, being a force raised and maintained in India under the authority of the Central Government, all the provisions of the said Act with the exception of those shown in Schedule "A" subject to the modifications set forth in Schedule "B", and

(b) direct that the officers mentioned in the first column of Schedule "C" shall exercise or perform in respect of members of the said force under their command the jurisdiction, powers and duties incidental to the operations of the said Act, specified in the second column thereof.

11. So far as Schedule "A" of the SRO is concerned, it excepts certain provisions of the Army Act and states that they do not apply to the members of G.R.E.F. whereas Schedule "B" of the Notification relates to certain amendments in Sections 3, 63, 73, 81(4), 113, 114 and 116(1) of the said Act. In the above judgment, this Court noticed

the definition of the word, "the Forces" in Section 3(xi) of the Army Act which reads as follows:

(xi) "the Forces" means the regular Army, Navy and Air Force or any part of any one or more of them;

12. This Court also referred to Section 4(1) & (4) of the Army Act, 1950 which read as follows:

4(1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government, including any force maintained by a Part B State, and suspend the operation of any other enactment for the time being applicable to the said force.

* * * *

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

13. It was held in that case that G.R.E.F. came within Sub-section (1) of Section 4 inasmuch as it was a "Force" raised and maintained in India under the authority of the Central Government. It was further held that the entire infrastructure of GREF was modelled on the pattern of the Army and it was organised into units and sub-units with command and control system similar to that in the Army. The personnel of GREF right from Class IV to Class I had to be in uniform with distinctive badges of rank and they had a rank structure equivalent to that of the Army. GREF was primarily intended to carry out defence and other works projected by the General Staff of the Army Headquarters and it was only when spare capacity was available that GREF could undertake works of other ministries or departments or agency basis and there also, preference would be given to strategic and other roads in sensitive areas. This Court referred to the definition of the Armed Forces in Section 3(xi) (at page 420) and observed that the word, "Force" was not defined anywhere under the Army Act, 1950 but there was definition of the words, "the Forces" in Section 3(xi), but it would not help because the expression to be construed was the word "Force" which was different from the words, "the Forces". After having so observed, this Court referred to the question whether the members of GREF could be considered to be the members of the "Armed Forces" within the meaning of Article 33 of the Constitution of India. This became necessary in that case because the question was whether the fundamental rights of the GREF Officers stood restricted as in the case of the three principal Forces. If Article 33 applied, the State would be protected under Article 33 of the Constitution of India and it could take disciplinary action within the limits permitted by a restrictive law. After going through various provisions, this Court held that GREF was an integral part of the

Armed Forces and the members of the GREF were the members of the Armed Forces within the meaning of Article 33 of the Constitution of India and the disciplinary action taken in that case was not ultra vires.

14. In fact, there is a notification dated 14-8-1985 which forms part of the paper book before us issued by the Government of India being No. F 81(I)/64-Eastt.70463/GREF which states that in view of the judgment in *R. Viswan and Ors. v. Union of India and Ors.*, the President of India is pleased to declare General Reserve Engineer Force to be an integral part of the Armed Forces of India.

15. Relying on the above said judgment and the order issued by the Government of India dated 14-8-1986 and Section 4(1) of the Army Act, 1950, learned senior counsel for the appellant contended that GREF was a Force falling within the connotation of Armed Forces under Article 33 of the Constitution of India and that is why Section 4(1) of the Army Act was made applicable to the GREF and if that was the position of law, the appellant was entitled to claim that his past service fell within the definition of "military service" under Rule 2 of the Punjab Government National Emergency (Concession) Rules, 1965.

16. There cannot be any difficulty, in view of the judgment of this Court in the above case and the subsequent notification dated 14-8-1985 issued by the Government of India, that the appellant's service in GREF could be treated as service in the "Armed Forces" for purposes of Article 33 of the Constitution of India. But the question is whether that is sufficient for the purpose of attracting Rule 2 of the above said 1965 Punjab Rules dated 21-7-1965 ?

17. We have already extracted the above rule and it would be noticed that the military service which would be counted as service must be service as an "enrolled" or "commissioned" officer in the "three wings" of the Indian Armed Forces (including the service as Warrant Officer) That is what Rule 2 of the Punjab Rules of 1965 requires.

18. It appears to us that the words, "three wings" used in Rule 2 of the above said Rules has to be understood in the light of Section 3(xi) of the Army Act, 1950 which defines, the word, the Forces" as the regular Forces, namely, the Army, Navy and Air Force or any part of any one or more of them. The Punjab Rules permitting computation of "military service" therefore, appear to us to restrict the benefit of military service only to those Officers who are enrolled or commissioned in the three principal wings of the Armed Forces, namely, Army, Navy and Air Force and it was not intended to extend to any other Armed Force to which the provisions of the Indian Army Act are extended u/s 4(1) of the Army Act, 1950.

19. Thus, even though the appellant can be said to belong to the "Armed Forces" for purposes of the Army Act and Article 33 of the Constitution of India, and even assuming that he was enrolled or commissioned in the GREF, still his service could not be treated as service rendered in the "three principal wings" of the Armed

Forces, namely, Army Navy and Air Force. We are, therefore, of the view that the judgment of the Division Bench of the High Court is correct and the appellant is not entitled to count his service in the GREF for the purpose of seniority in the provincialised service under the State of Punjab. The Punjab Rules of 1965 are thus not applicable to the appellant.

20. Learned senior counsel for the appellant, however, invited our attention to a statement made in the counter affidavit filed by Mr. Om Prakash Tandon, PGS (I), Under Secretary to Government of Punjab, Department of Local Government on behalf of Respondent Nos. 1 & 2 in the writ petition. (Respondent No. 1 in the writ petition is the State of Punjab and respondent No. 2 is the Director, Local Self Government Department, Punjab, Chandigarh). At page 75 of the paper book, we find in the said counter affidavit filed by the said Officer it was stated that the appellant was entitled for the benefit of previous military service for the purpose of "pay and leave" but he was not entitled for the benefit of said service for "seniority". We take note of the fact that such a statement is made in the counter affidavit.

21. For the aforesaid reasons, this appeal fails and is hereby dismissed, but in the circumstances of the case with no order as to costs.

CIVIL APPEAL NO. 500 OF 1992

22. In view of the order passed in Civil Appeal No. 499 of 1992, this appeal also fails and is hereby dismissed, but in the circumstances of the case with no order as to costs.