



## IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.947 of 2023

Date of Decision: 30.12.2025

Sanjeev Kumar

Versus

.....Petitioner

State of H.P. and Others

....Respondents

Coram:

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**Whether approved for reporting? <sup>1</sup> Yes.**For the Petitioner:** Mr. Neeraj Kumar Shashwat, Advocate.**For the Respondents:** Mr. Rajan Kahol, Additional Advocate General, with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General, for State.

Mr. Sunil Mohan Goel, Sr. Advocate, with Mr. Raman Jamalta, Advocate, for respondents No.2 &amp; 3.

**Sandeep Sharma, Judge (oral):**

Primarily the question, which needs to be determined in the case at hand is “*whether the benefit of approved military service for the purpose of pay fixation in terms of Sub-Rule 1 of Rule 5 of Rules, 1972, can be denied to the Ex-servicemen in terms of amendment carried out in aforesaid Rule 5 vide Notification dated 29.01.2018, wherein it came to be provided that only the period of approved military service rendered after attaining the minimum age and educational qualification prescribed for the service concerned by the candidate against reserved vacancy shall count towards fixation of pay in that service at the time of first civil employment against reserved vacancy*”.

<sup>1</sup>Whether the reporters of the local papers may be allowed to see the judgment?

2. Quintessential, facts as emerge from the pleadings adduced on record by the respective parties are that petitioner herein, who is an Ex-serviceman, after his having rendered more than 15 years of approved military service in the Indian Armed Forces, appeared in the competitive examination to get civil employment i.e. Junior Clerk in the Himachal Pradesh State Cooperative Bank in the year 2017 under the category of OBC (Annexure P-1). Petitioner successfully passed the competitive examination, as detailed hereinabove, and accordingly was issued appointment letter dated 27.09.2017 (Annexure P-2).

3. Though in terms of aforesaid appointment letter, petitioner was required to report to the Manager/Incharge of Branch Office Surgani, Chamba, on or before 09.10.2017, but since at relevant time, he was not relieved from the Armed services, he made request through representation dated 03.10.2017 for extension in joining time (Annexure P-3). Pursuant to afore request made by the petitioner, respondent-Bank vide communication dated 16.10.2017 (Annexure P-4) extended joining time till 28.02.2018. While granting afore extension, petitioner came to be specifically apprised vide afore communication that rest of the terms of terms and conditions, as contained in the appointment letter dated 27.09.2017, shall remain same.

4. After his having retired from the Armed services on 31.01.2018, petitioner reported for duty at Branch Office Surgani, District Chamba on 26.02.2018 (Annexure P-5). Since petitioner herein was not

granted benefit of entire approved military service rendered by him prior to his being given civil employment, he filed representation (Annexure P-6), however, such prayer of him was rejected vide communication dated 27.09.2021 (Annexure P-7). In the afore background, petitioner has approached this Court in the instant proceedings, praying therein for following main reliefs:

"I. That appropriate Writ or direction may very kindly be issued to respondent that to fix the pay of the petitioner while counting the entire past years service as ex-serviceman."

5. In nutshell, case of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Neeraj Kumar Shashwat, learned counsel representing the petitioner, is that respondents ought not have applied the amended Rules with retrospective date, rather entire military service rendered by the petitioner ought to have been taken into consideration for the purpose of pay-fixation in terms of unamended Rule 5(1). Mr. Shashwat, learned counsel representing the petitioner, submitted that since petitioner herein was offered appointment against the post of Junior Clerk vide appointment letter dated 27.09.2017 (Annexure P-2) and thereafter, joining time was extended, Rule 5(1), modified vide Notification dated 29.01.2018, could not have been applied in the case of the petitioner, rather unamended Rule 5(1) should have been applied in his case, wherein there was no condition of minimum age as well as essential qualification. In support of his afore submissions, he placed reliance upon judgment passed by Division

Bench of this Court in CWP No.6443 of 2021, titled as **Babu Ram Vs. State of Himachal Pradesh and Others**, along with connected matters, wherein this Court while dealing with the issue, as has been raised in the instant petition, held that service conditions of Ex-servicemen who joined civil employment are to be determined in terms of 1972 Rules, as it existed at the time Ex-servicemen joined their services. Mr. Shashwat, learned counsel representing the petitioner, while referring to afore judgment vehemently argued that since in the instant case, petitioner though joined services after 29.01.2018, but since he was offered appointment vide appointment letter dated 27.09.2017, Notification dated 29.01.2018 does not affect the right of the Ex-serviceman for counting of entire approved military service towards fixation of pay.

6. To the contrary, Mr. Sunil Mohan Goel, learned Senior Counsel representing the respondent-Bank vehemently argued that in terms of Notification dated 29.01.2018, Ex-servicemen would be entitled to grant of benefit of approved military service towards fixation of pay prospectively from 29.01.2018. While referring to aforesaid Notification, he submitted that since petitioner herein acquired requisite qualification qua the post of Junior Clerk in the respondent-Bank in the year 2014, no illegality can be said to have been committed by the respondents while counting Army service rendered by the petitioner after the year 2014, till his superannuation, for the purpose of pay fixation. Mr. Goel, learned Senior Counsel representing the respondent-Bank, further argued that

though in the case at hand, appointment against the post of Junior Clerk in the H.P. State Cooperative Bank Ltd. was offered to the petitioner on 27.09.2017 (Annexure P-2), but once it is not in dispute that pursuant to afore appointment letter, petitioner joined service on 26.02.2018 i.e. after the issuance of Notification dated 29.01.2018, coupled with the fact that he acquired minimum qualification required for the post in question in the year 2014, there was no occasion, if any, for respondent-Bank to take into consideration the entire military service rendered by the petitioner prior to his civil employment in the respondent-Bank. While making this Court peruse judgment passed by this Court in *Babu Ram's* case (supra), Mr. Goel contended that petitioner cannot take any advantage of aforesaid judgment, rather same is against him. He submitted that in terms of aforesaid judgment, service conditions of Ex-servicemen who joined civil employment are to be determined in terms of 1972 Rules, as it existed at the time Ex-servicemen joined their services. He submitted that petitioner joined on 26.02.2018, by which time, Rule 5(1) of Demobilized Armed Forces Personnel (Reservation of Vacancies in H.P. Non-Technical) Rules, 1972 (**for short, 'Rules 1972'**), stood amended vide Notification dated 29.01.2018. He submitted that since as per amended Rules, benefit of past service can only be available from the date when Ex-serviceman acquired age and minimum educational qualification required for the post in question, no benefits can be given for the Army service rendered prior to the date of acquiring educational

qualification. He submitted that petitioner passed his graduation in the year 2014, whereafter he became eligible for civil employment against the post of Clerk and as such, respondents rightly took into consideration the services rendered by the petitioner after 2014 for the purpose of pay fixation.

7. I have heard the parties and gone through the record of the case.

8. Before ascertaining the correctness of rival submissions made at the behest of learned counsel representing the parties, it would be apt to take note of Rules 3(1) and 5(1) of Rules 1972, which read as under:

“3. Reservation of vacancies: (1) [Fifteen percent of the vacancies in respect of all post viz. Class I, II, III and IV to be filled up through direct recruitment shall be reserved for being filled up by the Released Indian Armed Forces Personnel or ex-servicemen who joined service or were commissioned on or after the 1st day of November, 1962 and are released any time thereafter. This 15% reservation in Class III and IV post will also include appointment of one dependent each of the family of those Defence Services Personnel who were killed in action or were disabled in action and rendered unfit for civil employment. Such dependent shall have to fulfil the requirements of the Recruitment and Promotion Rules of the post (s) to which they will be appointed, but they shall not be entitled for other benefits/concessions such as fixation of pay and seniority under rule 5(1):

Provided that whatever vacancies are left over due to non-availability of suitable ex-servicemen who joined service or were commissioned on or after 1st day of November, 1962, and the dependents as provided above will be filled by suitable ex- servicemen who joined service or were commissioned before 1<sup>st</sup> day of November, 1962. The concession such as relaxation in age as provided in these rules shall also be

admissible to such ex-servicemen. However, the benefit of counting the period of approved military service for the purpose of fixation of seniority and pay as provided in rule 5(1) of these rules, shall not be admissible to such ex-servicemen.

5. Seniority and pay: (1) Only the period of approved military service rendered after attaining the minimum age prescribed for appointment to the service concerned by the candidates appointed against reserved vacancies under the relevant Rules, shall count towards fixation of pay and seniority in that service. (This benefit shall however be allowed at the time of first civil employment only and it shall not be admissible in subsequent appointments of ex-servicemen who are already employed under State/Central Govt. against reserved posts)."

**9.** Careful perusal of Rule 3(1) suggests that fifteen percent of the vacancies in respect of all posts i.e. Class I, II, III and IV shall be reserved for Released Indian Armed Forces Personnel or ex-servicemen, who joined service or were commissioned on or after the 1st day of November, 1962. Similarly, Rule 5(1) provides that period of approved military service rendered after attaining the minimum age prescribed for appointment to the service concerned by the candidates appointed against reserved vacancies under the relevant Rules, shall count towards fixation of pay and seniority in that service, however, such benefit shall be allowed at the time of first civil employment only and it shall not be admissible in subsequent appointments of ex-servicemen, who are already employed under State/Central Govt. against reserved posts.

**10.** It is also not in dispute that validity of Rule 5(1), as detailed hereinabove, was laid challenge in CWP No.488 of 2001, titled as *Shri*

**V.K. Behal and Others Vs. State of H.P. and Others**, on the ground that those Ex-servicemen, who had not joined service in the Armed forces during emergency are not entitled to benefits in terms of the aforesaid Rule 5(1). Afore writ petition was allowed vide judgment dated 29.12.2008 passed by Division Bench of this Court, wherein Rule 5(1) of the Rules came to be read down to the extent it provides benefit of counting of past service rendered in Armed forces for the purpose of counting their seniority in the civil service. Most importantly in afore judgment, it also came to be ruled that in case Rule 5(1) is to be upheld, entire benefit of same should be made available to those Ex-servicemen only, who joined the Armed forces during emergency. Besides above, Division Bench of this Court also held that benefit of such service cannot be given from a date prior to the date when the ex-serviceman attains the minimum educational eligibility criteria, prescribed in the Rules.

Relevant para of aforesaid judgment is reproduced herein below, which reads as under:

"In view of the above discussion, the writ petition is allowed. the Provision of Rule 5(1) of the Rules are read down and they are held to be unconstitutional in so far as they give benefit of counting the past army service towards seniority in civil employment in case of ex-servicemen who have not joined the Armed forces during the period of emergency. It is also held that the benefit of such service cannot be given from a date prior to the date when the ex-serviceman attains the minimum educational eligibility criteria prescribed in the rules. Consequently, the seniority list Annexure P-3 is held to be illegal and is accordingly quashed and the respondents are directed to re-frame the

same in accordance with the directions issued hereinabove. There shall be no order as to costs."

**11.** It is not in dispute that aforesaid judgment rendered by Division Bench of this Court was though laid challenged before the Hon'ble Apex Court in Civil Appeal No.011060 of 2017, titled **R.K. Barwall and other v. The State of Himachal Pradesh and Others**, but the same was dismissed vide judgment dated 25.08.2017. After dismissal of SLP in *R.K. Barwal's* case (*supra*), State of Himachal Pradesh, vide Notification dated 29.01.2018 made certain amendments to Rule 5(1) of the the Rules 1972, which reads as under:

"For sub-rule (1) of the rule 5 of the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-Technical Services) Rules, 1972, for the existing provisions of Sub rule (1), the following shall be substituted, namely:-

"Only the period of approved military service rendered after attaining the minimum age and qualification prescribed for appointment to the service concerned, by the candidate (s) appointed against reserved vacancy under the relevant rules, shall count towards fixation of pay in that service at the time of first civil appointment against reserved vacancy. This benefit shall not be admissible in subsequent appointment (s) of Ex-Servicemen who are already employed under the State/Central Government, against reserved post(s).

Provided that such fixation of pay will be in accordance with the instructions issued by the Finance Department from time to time."

**12.** If the aforesaid amendment is read in its entirety, it suggests that only the period of approved military service rendered after attaining the minimum age and qualification prescribed for appointment to the service concerned, by the candidate(s) appointed against reserved

vacancy is to be counted towards fixation of pay. With the issuance of aforesaid Notification dated 29.01.2018, Ex-servicemen who though stood appointed against a civil post in the State of Himachal Pradesh, prior to issuance of aforesaid Notification, are being denied benefit of counting of military service rendered by them, before their appointment under the Ex-serviceman quota for the purpose of pay fixation on the ground of qualification and as such, they approached this Court by way of CWP No.6443 of 2021, titled as ***Babu Ram Vs. State of Himachal Pradesh and Others***, along with connected matters, praying therein to set aside Notification dated 29.01.2018.

**13.** It also emerges from the record that prior to filing of the afore petitions, some of similar situate persons had approached erstwhile Himachal Pradesh Administrative Tribunal by way of Original Applications which subsequently on account of abolition of the Tribunal were transferred to this Court and were registered as CWPOA Nos.5478 of 2020 (LPA No.16 of 2020) No.231 of 2019 (LPA No.34 of 2021 and No.237 of 2019 (LPA No.70 of 2020), laying therein challenge Notifications dated 29.01.2018/30.01.2018. Though in afore cases, respondent-State, while placing reliance on judgment of Division Bench in *V.K. Behal* supra, attempted to argue that the benefit of approved military service in terms of Rule 5(1) for the purpose of pay fixation can only be granted after attaining minimum age and educational eligibility criteria prescribed for appointment to the service concerned, by the

candidates appointed under reserved vacancy under relevant Rules, however, such plea of the State was not accepted by learned Single Judges of this Court. Learned Single Judges of this Court held the action of State in not giving benefit of approved military service towards fixation of pay is bad in law and upheld that right, by virtue of provision of Sub-Rule 1 of Rule 5 of 1972 Rules, which still exists. In nutshell, learned Single Judges held that Notification 29.01.2018 does not adversely affect right of the petitioners for counting of approved military service towards fixation of pay and as such, such benefit cannot be refused to the petitioners on the ground of qualification.

**14.** Being aggrieved and dissatisfied with aforesaid judgments rendered by learned Single Judges, in cases detailed hereinabove, respondent-State filed Letters Patent Appeals, which ultimately came to be decided vide judgment dated 09.05.2022 along with *Babu Ram*'s case. In *Babu Ram*'s case, respondent-State again set up a defence that benefit of past service can only be available from the date, when Ex-serviceman acquired age and minimum educational qualification. While referring to the judgment passed in *V.K. Behal* (supra), respondent-State argued that Ex-servicemen though may avail benefit of fixation of pay, but cannot be given benefit of past service towards their seniority in the civil service and such benefit can only be available from the date, they acquired minimum age and minimum educational qualification prescribed for the post in question.

15. To the contrary, respondents in afore cases, submitted before the Division Bench of this Court that that at no point of time, part of Sub-Rule 1 of Rule 5 which deals with the relevant benefit, ever came to be dealt with by Division Bench while delivering decision in *V.K. Behal* (supra) and as such, observation, if any, made in the aforesaid judgment with regard to acquisition of qualification for availing benefit of approved military service cannot be attracted in those cases, where employees appointed against the posts reserved for this category are only seeking benefit of approved military service towards fixation of pay. At this stage, it would be apt to take note of relevant Paras of the judgment passed by the Division Bench of this Court in *Babu Ram's* case, wherein issue otherwise sought to be decided in the instant petition has been already adjudicated:

"13. Moot question, which needs to be determined /adjudicated in the cases at hand is that, whether the benefit of approved military service for the purpose of pay fixation in terms of sub-rule 1 of rule 5 of Rules, 1972, can be denied to the Ex-servicemen in terms of amendment carried out in aforesaid rule 5 vide Notification dated 29.1.2018, wherein it has been provided that only the period of approved military service rendered after attaining minimum age and educational qualification prescribed for the service concerned by the candidate against reserved vacancy shall count towards fixation of pay in that service at the time of first civil employment against reserved vacancy.

14. Mr. Vikas Rathore, learned Additional Advocate General representing the State, while inviting attention of this court to the judgment rendered by Division Bench in *V.K. Behal* supra, which has been further upheld by Hon'ble Apex Court, argued that in all cases, benefit of past service can only be available from the date, when Ex-serviceman acquired age and minimum educational qualification and

as such, no benefit can be given for the army service rendered prior to the date of acquiring educational qualification. Mr. Vikas Rathore, learned Additional Advocate General further argued that the Division Bench in V.K. Behal *supra* has held that Ex-servicemen though may avail benefit of fixation of but cannot be given benefit of past service towards their seniority in the civil service and such benefit can only be available from the date, when they acquired age and minimum educational qualification prescribed for the post in question. Learned Additional Advocate General further argued that Notification dated 29.1.2018 amending thereby rule 5 is strictly in conformity with the judgment passed by Division Bench in V.K. Behal *supra* and as such, same cannot be interfered with.

15. Per contra, learned counsel representing the respondents in the appeals and petitioners in the Civil Writ Petition/Civil Writ Petition (Original Application)s., who are beneficiaries of provisions contained under rule 5 of the Rules 1972, contended that at no point of time, part of sub-rule 1 of rule 5 which deals with the relevant benefit, ever came to be dealt with by Division Bench while delivering decision in V.K. Behal and as such, observation, if any, made in the aforesaid judgment with regard to acquisition of qualification for availing benefit of approved military service cannot be attracted in those cases, where employees appointed against the posts reserved for this category are only seeking benefit of approved military service towards fixation of pay. While inviting attention of this court to judgment of Division Bench in Avtar Singh Dyal v. H.P. State Electricity Board Ltd. CWP No. 4654 of 2013 and connected matter, decided on 26.11.2014, learned counsel for the petitioners argued that Ex-servicemen were held entitled for grant of benefit of counting the approved military service, towards fixation of pay. In support of their submissions, learned counsel for the petitioners also invited attention of this court to judgment passed by learned Single Judge dated 15.7.2020 in CWPOA No. 231 of 20119 titled Amar Nath and others v. State of Himachal Pradesh and others and connected matter, which has been otherwise laid challenge in above captioned appeals, by the State.

16. Having heard learned counsel for the parties and perused material available on record, this court finds that there is no dispute amongst the parties that the petitioners in the writ petitions as well as

respondents in the Letters Patent Appeals having been filed by the State are Ex-servicemen and they all have been appointed against the posts reserved for Ex-servicemen in various Departments of State of Himachal Pradesh.

17. Though, initially this category was getting benefit of approved military service in terms of Rule 5 (1) of the Rules, 1972, for counting seniority in service apart from fixation of pay but Division Bench of this Court in V.K. Behal *supra*, which has been further upheld by Hon'ble Apex Court, has read down rule 5(1) of the Rules, 1972, to the extent, it provided for counting of the approved military service towards seniority in the subsequent service of the State. It is also not in dispute that in V.K. Behal *supra*, Division Bench held that the benefit of past service can only be available from a date when Ex-serviceman acquired the age and minimum educational qualification and no benefit can be given for the army service rendered prior to the date of acquisition of such qualification.

18. In compliance to aforesaid observation made by Division Bench of this Court in V.K. Behal *supra*, rule 5 was amended vide Notification dated 29.1.2018 providing therein that only the period of approved military service rendered after attaining the minimum age prescribed for appointment to the service concerned by the candidates appointed against reserved vacancies under the relevant Rules, shall count towards fixation of pay and seniority in that service.

19. Now drawing strength from the aforesaid amendment carried out in the said rule, benefit of approved military service towards fixation of pay is being restricted to the period of approved military service, rendered after attaining the minimum age and educational qualification prescribed for the post, on which such Ex-serviceman is appointed.

20. Since it is quite apparent from the judgment in V.K. Behal *supra*, that rule 5(1) has been read down to the extent it had provided benefit of counting approved military service towards seniority in the service, there cannot be any dispute qua the entitlement of Ex-serviceman for counting of approved military service towards fixation of pay. However, in the cases at hand, State by way of issuing Notifications dated 29.1.2018 and 30.1.2018 has attempted to deny benefit of approved military service to the Ex-serviceman for the purpose of pay fixation. Vide communication dated 30.1.2018, issued by Additional Chief

Secretary to the Government of Himachal Pradesh to various officers of the State, it has been conveyed that in terms of judgment of this court in V.K. Behal, benefit of seniority as per 1972 Rules and the Ex-servicemen.. (Reservation of Vacancies in the Himachal Pradesh Technical Services) Rules, 1985 are to be reviewed and seniority lists in all cadres are to be reframed accordingly showing position as on 29.12.2008, when this Court had read down and declared the rule 5(1) of the Rules, 1972 unconstitutional, insofar as it gives benefit of counting of past army service towards seniority in civil employment in the case of ex-servicemen, who have not joined the Armed forces during the period of emergency. However, the ex-servicemen appointed against the vacancies reserved for ex-servicemen in civil employment shall be entitled to avail the benefit of fixation of pay from a date when the ex-servicemen attain minimum age and educational qualification eligibility criteria prescribed in the rules. The fixation of pay will be in accordance with the instructions issued by the Finance Department from time to time. The above referred instructions dated 17.5.2013 were rescinded accordingly.

21. There cannot be any quarrel with the fact that now Ex-servicemen who did not join the Armed Forces during period of emergency are not entitled to have benefit of approved military service for the purpose of seniority but the action of the State, in not giving benefit of approved military service towards fixation of pay of the ex-servicemen is not sustainable in the eye of law being arbitrary. Once aforesaid right stands conferred upon Ex-serviceman in terms of provisions of sub-rule 1 of rule-5 of 1972 rules, which still exists in the rule book, amendment if any, carried out in the aforesaid rules after passing of judgment in V.K. Behal supra cannot be otherwise made applicable retrospectively qua those Ex-servicemen, who otherwise stand appointed against the posts reserved for this category prior to issuance of Notification dated 29.1.2018. Perusal of aforesaid Notification which has been extracted herein above, clearly reveals that these amended rules were to come into force from the date of publication in Rajpatra/E-gazette of Himachal Pradesh i.e. 29.1.2018, meaning thereby that the Ex-servicemen who stood appointed prior to issuance of aforesaid Notification against the posts reserved for this category, otherwise cannot be denied benefit of approved military service

towards fixation of pay, on the ground of minimum age and educational eligibility criteria.

22. Otherwise also, this issue is no more res integra in terms of judgment of this court in Avtar Singh Dyal case supra, wherein it has been held that right of Ex-serviceman to avail the benefit of counting approved military service towards fixation of pay in terms of sub-rule (1) of rule 5 of 1972 rules cannot be denied/defeated even if an Ex-serviceman had not joined Armed Forces during emergency. Relevant paras of the aforesaid judgment are reproduced herein below:

"Rule 5(1) of the Demobilized Armed Forces Personnel (Reservation of vacancies in the Himachal Pradesh State Non-Technical Services) Rules, 1972, reads thus:

"(1) Only the period of approved military service rendered after attaining the minimum age prescribed for appointment to the service concerned by the candidates appointed against reserved vacancies under the relevant rules, shall count towards fixation of pay and seniority in that service. This benefit shall however be allowed at the time of first civil employment only and it shall not be admissible in subsequent appointments of ex-servicemen who are already employed under the State/Central Govt. against reserved posts."

8. In case the aforesaid rule is minutely analyzed, it would be seen that it comprises of two parts, 1st pertains to counting of service for the purpose of fixation of pay and 2nd pertains to counting of service for the purpose of seniority.

9. The question therefore, required to be determined is as to whether this court while deciding V.K.Behal's case (supra) declined all the benefits provided under Rule 5(1) (supra) to those exservicemen, who admittedly had joined the Armed Forces as a career. In our humble and considered opinion the court has only adjudicated upon the benefit of counting of past army service towards seniority in civil employment and has not adjudicated upon the conferment of benefit of past army service in so far it pertains to fixation of pay. In fact this claim was neither agitated by the petitioners therein nor adjudicated upon by this court. Rather what appears from the perusal of judgment is that even

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the petitioners therein had no objection in case financial benefit like fixation of pay was granted to the ex-servicemen, as would be clear from para-3 of report, which reads as follows:-

"3. The main contention raised on behalf of the petitioners by Sh. Dalip Sharma is that the Rules are unconstitutional because they give benefit of even those ex-servicemen who had not joined service in the armed forces during the period of emergency. According to the petitioners, the persons who join the armed forces when the situation in the Country is normal do not do anything extra-ordinary and they join the armed forces like any other career and therefore, there is no rationale for giving them benefit of the service rendered by them in the armed forces for the purposes of pay and seniority. Sh. Dalip Sharma, learned counsel for the petitioners had urged that he is not in any manner arguing that the ex-servicemen do not form a separate class. He submits that to satisfy the tests of Article 14 not only should the classification be justified but there should be a reasonable nexus with the object sought to be achieved. It is his submission that if the object is to rehabilitate the ex-serviceman this object is served by providing reservations to them. However, according to him, there is no justification in granting them the benefit of seniority by adding the period of service rendered by them in the Army. He submits that once the persons are recruited from various sources and become members of one service no further distinction can be made between them on the ground of the past service rendered in a totally unrelated employment. In the alternative he submits that the benefit, if any, should be restricted to grant of financial benefits like fixation of pay only and the rights of other individuals who joined service much before the ex-servicemen cannot be jeopardized by giving the ex-servicemen benefit of adding the service rendered by them in the armed forces for reckoning their seniority. According to him, the case of ex-servicemen who joined armed forces during the period of emergency when the Nation was facing foreign aggression or when the

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sovereignty and integrity of the Country was at stake, stands on a completely different footing and the exservicemen who joined during emergency have to be treated as a different class. The benefit given to such exservicemen who joined during emergency cannot be extended to the person who joined service during normalcy. In the alternative it is urged that even if the Rule is held to be valid the deemed date of appointment cannot be from a date prior to such persons acquiring the minimum educational eligibility criteria prescribed in the Rules."

10. Notably even this court did not find any illegality in so far as the pay of ex-servicemen was protected, as would be clear from the following observations:-

"10. There may exist an intelligible criteria for providing reservation to ex-servicemen. The object is also reasonable i.e.. to rehabilitate the ex-servicemen but this object can be achieved by providing reservations to them. Nobody is against such reservation. Their pay can also be protected. The problem arises when there is a conflict between persons from the civil society who have joined service much earlier than the ex-servicemen but then they are placed lower when the ex-servicemen who are given benefit of their past service regardless of the fact whether they have joined during emergency or not."

11. Once this is the position, the respondents cannot under pretext of judgment in V.K.Behal's case (supra), being sub-judice before the Hon'ble Supreme Court, deny to the petitioners the benefit of approved military service for counting the same towards fixation of pay.

12. In so far as the question of counting the same towards the seniority is concerned, the same shall essentially have to abide by the decision of the apex court in V.K.Behal's case. In the event of the Hon'ble Supreme Court ultimately deciding in favour of the exservicemen, then needless to say that the same benefit shall also have to be extended to the petitioners.

13. With these observations, the petitions are partly allowed. The respondents are directed to grant the benefit of approved military

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service towards fixation of pay after considering their cases against the vacancies of ex-servicemen, which have arisen in the year 2012. The Registry is directed to place a copy of this judgment on the file of connected matter." 

23. Amendment carried out in sub-rule 1 of Rule 5 vide Notification dated 29.1.2018, otherwise does not affect rights of the petitioners, who are claiming benefit of counting of approved military service towards fixation of pay. Government of Himachal Pradesh with a view to bring 1972 Rules in harmony with judgment of this Court in V.K. Behal supra has amended aforesaid rules providing therein that the approved military service shall be counted only for the period, when such Ex-serviceman acquired the minimum age and educational qualification. However, this court is of the view that provision of grant of benefit of approved military service for fixation of pay was very much in 1972 Rules and the same has not been altered /amended even by the amendment carried out vide Notification dated 29.1.2018 and as such, this court has no hesitation to conclude that the Notification dated 29.1.2018 does not affect the right of the Ex-serviceman for counting of approved military service towards fixation of pay.

24. Learned Additional Advocate General vehemently argued that in terms of Notification dated 29.1.2018, ex-servicemen would be entitled to grant of benefit of approved military service towards fixation of pay prospectively from 29.1.2018 but such plea of him deserves outright rejection being devoid of merit. Service conditions of Ex-servicemen who joined civil employment are to be determined in terms of 1972 Rules, as it existed at the time ex-servicemen joined their services. When the ex-servicemen joined their services, they were very much entitled for grant of approved military service towards fixation of pay. It cannot be disputed that aforesaid right of availing benefit of approved military service towards fixation of pay was very much in the rule book, which otherwise never came to be tinkered/quashed and set aside by Division Bench of this court while delivering judgment in V.K. Behal supra.

25. Consequently, in view of detailed discussion made herein above, we find merit in the writ petitions and accordingly the same are allowed and the respondents are directed to give benefit of approved military service to the ex-servicemen towards fixation of pay, from the time,

they joined the civil employment, ignoring amendment carried out in provision of rule 5(1) of the rules, 1972 which otherwise can be said to have come into operation from the date of Notification dated 29.1.2018.

26. In view of above, Letters Patent Appeals Nos. 70 of 2020, 16 of 2021 and 34 of 2021 are dismissed. Judgments passed by learned Single Judge laid challenge to in the aforesaid appeals are upheld. CWPOA's Nos. 5641 and 5644 of 2020, CWP No. 6443 of 2021 and CWP's Nos. 412, 455 of 2022 and 6358 of 2021 are accordingly allowed in the afore terms."

**16.** While referring to afore judgment, Mr. Sunil Mohan Goel, learned Senior Counsel representing the respondent-Bank strenuously argued that same cannot be made applicable to the case of the petitioner to his advantage, rather same is against him, however, having carefully perused aforesaid judgment, this Court is not persuaded to agree with aforesaid submission of Mr. Goel. In afore judgment, Division Bench of this Court specifically held that action of the State, in not giving benefit of approved military service towards fixation of pay of the ex-servicemen is not sustainable in the eye of law being arbitrary. Once aforesaid right stands conferred upon Ex-serviceman in terms of provisions of Sub-Rule 1 of Rule 5 of 1972 Rules, which still exists in the Rule book, amendment if any, carried out in the aforesaid Rules after passing of judgment in *V.K. Behal* (supra) cannot be otherwise made applicable retrospectively qua those Ex-servicemen, who otherwise stand appointed against the posts reserved for this category prior to issuance of Notification dated 29.01.2018. Moreover, perusal of aforesaid Notification clearly reveals that these amended Rules were to

come into force from the date of publication in Rajpatra/E-gazette of Himachal Pradesh i.e. 29.01.2018, meaning thereby that the Ex-servicemen who stood appointed prior to issuance of aforesaid Notification against the posts reserved for this category, cannot be denied benefit of approved military service towards fixation of pay, on the ground of minimum age and educational eligibility criteria.

17. Admittedly, in the case at hand, petitioner was offered appointment against the post of Junior Clerk in the Himachal Pradesh State Cooperative Bank on 27.09.2017 (Annexure P-2). Though in terms of aforesaid appointment letter, petitioner was required to join on or before 09.10.2017, but as has been noticed hereinabove, prayer made on behalf of the petitioner for extension in joining time was accepted by the respondent-Bank vide communication dated 16.10.2017, thereby granting time to the petitioner to join till 28.02.2018. It is not in dispute that prior to afore date, petitioner joined at allotted station. Though Mr. Sunil Mohan Goel, learned Senior Counsel representing the respondent-Bank, attempted to argue that since petitioner joined respondent-Bank after 29.01.2018, by which time Rule 5(1) of Rules 1972 stood amended, there is no occasion, if any, to take into consideration the military service rendered by the petitioner prior to year 2014, in which year he had possessed requisite qualification for the post in question, but this Court is not impressed with aforesaid submission of Mr. Goel for the reason that

date of appointment is most crucial for determining the applicability of Rule 5(1), which was amended vide Notification dated 29.01.2018.

**18.** Though while referring to Para No.24 of the judgment rendered by the Division Bench of this Court in *Babu Ram's* case, Mr. Goel argued that service conditions of Ex-servicemen who joined civil employment are to be determined in terms of 1972 Rules, as it existed at the time Ex-servicemen joined their services, but having carefully perused Para No.24 of the judgment rendered in *Babu Ram's* case, this Court finds that though Division Bench of this Court, while dealing with the submission made by learned Additional Advocate General that in terms of Notification dated 29.01.2018, Ex-servicemen would be entitled to grant of benefit of approved military service towards fixation of pay prospectively from 29.01.2018, observed that service conditions of Ex-servicemen who joined civil employment are to be determined in terms of 1972 Rules, as it existed at the time Ex-servicemen joined their services, but it categorically held that when ex-servicemen joined their services, they are very much entitled for grant of approved military service towards fixation of pay. It is not in dispute that right of availing benefit of approved military service towards fixation of pay was very much in the Rule book, when letter of appointment dated 27.09.2017 was issued to the petitioner.

**19.** At the cost of repetition, it is once again observed that Rule 5(1) was never tinkered/quashed and set aside by the Division Bench of

this Court in *V.K. Behal's* case, rather respondent-State taking note of observations made in *V.K. Behal's* case, amended Rule 5(1) vide Notification dated 29.01.2018, prescribing therein that only the period of approved military service rendered after attaining the minimum age and qualification prescribed for appointment to the service concerned, by the candidate(s) appointed against reserved vacancy under the relevant Rules, shall count towards fixation of pay in that service at the time of first civil appointment against reserved vacancy.

**20.** Admittedly with the issuance of appointment letter dated 27.09.2017 (Annexure P-2), right of the petitioner to avail benefit of military service rendered by him prior to his being selected in civil employment for the purpose of pay fixation stood crystallised. True it is that petitioner, pursuant to his being offered appointment vide appointment letter dated 27.09.2017, failed to join on or before 09.10.2017, but since respondent-Bank itself extended the time vide communication dated 16.10.2017 (Annexure P-4) and thereafter, petitioner joined within the extended time, rightful claim of the petitioner for counting of entire military service rendered by him prior to his civil employment in terms of Rule 5(1) of the unamended Rules 1972 cannot be permitted to be defeated on the ground that since he joined after 29.01.2018, by which time Rule 5(1) stood amended, entire military service rendered by him prior to his being offered civil employment cannot be taken into consideration.

21. Admittedly, petitioner herein remained in the Armed forces till 31.01.2018, but once Rules enables an Ex-serviceman to apply for civil employment one year prior to his date of superannuation in defence services, coupled with the fact that petitioner herein pursuant to his having cleared the written examination was offered civil employment vide appointment letter dated 27.09.2017, rightful claim of the petitioner for counting of entire military service rendered by him prior to his being offered civil employment for the purpose of pay fixation cannot be defeated on the ground that he joined civil employment after issuance of Notification dated 29.01.2018, whereby admittedly Rule 5(1) of Rules 1972 came to be amended.

22. True it is that in the case at hand, petitioner has failed to lay challenge to order dated 27.09.2021 (Annexure P-7), whereby representation made by him to grant benefit of entire military service rendered by him prior to his being offered civil employment came to be rejected, but this Court with a view to do complete and substantial justice while exercising power under Article 226 of the Constitution of India can always mould the relief. "Moulding of relief" principle was recognized by the Supreme Court in ***Pasupuleti Venkateswarlu v. The Motor & General Traders***, AIR 1975 SC 1709. It was observed therein that though the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding, the principle that procedure is the

handmaid and not the mistress of the judicial process is also to be noted.

Justice VR Krishna Iyer observed:

"If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decrotal remedy. Equity justifies bending the // 16 // rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice--subject, of course, to the absence of other disentitling (actors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

**23.** Consequently, in view of detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petition and accordingly, the same is allowed. Impugned communication dated 27.09.2021 (Annexure P-7) is quashed and set aside. Respondents are directed to give benefit of entire approved military service rendered by him towards fixation of pay, ignoring amendment carried out in Rule 5(1) of the Rules 1972.

The present petition is disposed of in the above terms, so also the pending miscellaneous application(s), if any.

**(Sandeep Sharma),  
Judge**

December 30, 2025  
(Rajeev Raturi)