R. K. BARWAL AND OTHERS

v.

STATE OF HIMACHAL PRADESH AND OTHERS

(Civil Appeal No. 11060 of 2017)

AUGUST 25, 2017

[A.K. SIKRI AND ASHOK BHUSHAN, JJ.]

Armed forces – Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal Pradesh State Non-Technical Services) Rules, 1972 – r.5(1) providing benefit of past service rendered in armed forces to ex-servicemen for the purpose of fixation of seniority and pay in civil employment – Challenge to – If such a benefit of counting past service rendered in the armed forces was admissible only to those personnel who joined the forces during the period of Emergency and not to ex-servicemen who had joined the armed forces at the time of peace – Held: Rules giving benefit of service in armed forces to those ex-servicemen who joined during Emergency are perfectly justified – Call of service to nation during war period is on a totally different footing than joining army when the country is not facing any such foreign aggression – Persons joining armed forces at that time, sacrificing their career, to be treated as a separate class by extending them the benefit in the matter of seniority as well – However, those who joined the armed forces during peace times, they do so in look out of a career and joined such services of their own volition – They join the armed forces as a profession like any other – Thus, the two categories of ex-servicemen form two separate classes and are not equal to each other – Service law – Reservation.

Service law – Armed forces – Reservation – Benefit of past service rendered in armed forces to ex-servicemen – Held: There exists an intelligible criterion for providing quota to ex-servicemen – The object is to rehabilitate the ex-servicemen which can be achieved by providing reservations to them – Rules reserving a particular quota, within reasonable limits does not offend the provisions of Art.14 – Constitution of India – Art. 14.

A *Service law – Seniority – Normal rule of – Departure from – Held: Seniority of an employee in service is to be determined with reference to the date of his entry in the service, which is consistent with the requirement of Arts. 14 and 16 – There have to be very weighty reasons for departure from this normal rule of fixing the seniority – Constitution of India – Arts. 14, 16.*

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Armed forces – Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal Pradesh State Non-Technical Services) Rules, 1972 – Respondent, an ex-service man appointed as peon against unreserved post, denied benefit available C *to the ex-servicemen under the 1972 Rules – Respondent approached Tribunal by filing O.A. which was allowed – Writ petition by State, dismissed by High Court – On appeal, held: The administrative instructions issued by Government stated that when a released Army Personnel has been appointed against the general un-reserved vacancy in the first instance, he should be given an option at the* D *time of first appointment to accept a reserved vacancy, even if it occurs subsequent to his appointment – However, such an option was never provided to the respondent – Respondent cannot be made to suffer due to reminiscence on part of the State Government – No error found in the judgment of High Court.*

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Dismissing the appeals, the Court

HELD: Civil Appeal Nos. 11060, 11061 and 11062 of 2017

F **1.1 There exists an intelligible criterion for providing quota to ex-servicemen. The object is to rehabilitate the ex-servicemen which can be achieved by providing reservations to them. Therefore, insofar as provision made in the Rules reserving a particular quota, within reasonable limits is concerned that is permitted and does not offend the provisions of Article 14 of the Constitution. There is an intelligible differentia having nexus with** G **the objective sought to be achieved. Likewise, provision in the Rules for protecting the pay is also held to be permissible. [Para 13] [686-F-G]**

Ram Janam Singh v. State of Uttar Pradesh and another H **(1994) 2 SCC 622 : [1994] 1 SCR 316 ;** *Chittranjan*

Singh Chima and Another v. State of Punjab and Others **(1997) 11 SCC 447 : [1997] 1 SCR 1010** ; *Narendra Nath Pandey and Other vs. State of U.P. and others* **AIR (1988) SC 1648 : [1988] 1 Suppl. SCR 574 – relied on.**

1.2 The provision in the Rules giving benefit of service in armed forces to those ex-servicemen who joined during Emergency, is perfectly justified. It is based on the rationale that sacrifice of such personnel in armed forces who joined the service in war times is much more than those persons who joined the armed forces during peace period. Reasoning proceeds on the basis that when a state of Emergency is declared and the nation is at war or facing the threat of aggression some young persons out of a feeling of patriotism join the armed forces knowing fully well that they are putting their lives at stake. They give up their chance to join civil service and live a comfortable life in the main cities of the country. The grant of the benefit of service rendered by these ex-servicemen while in armed forces, is held to be valid when they were recruited during Emergency. However, such a benefit should not be available to those who join the armed forces at a period when the country was not in conflict with any other country/enemy country. The denial of benefit to such persons is on the premise that these persons stand on a totally different footing from those who join service during emergency period. These persons weigh all the pros and cons and after taking into consideration all factors come to the conclusion that they have a good future in the armed forces. They join the armed forces as a profession like any other. [Para 14] [687-B-E]

1.3 The two categories of ex-servicemen form two separate classes and are not equal to each other. Thus, latter category is not entitled to counting of their service rendered in armed forces for the purpose of their seniority on joining the civilian post. Following this dicta laid down in the aforesaid judgments, the High Court has read down the rule in-question by limiting the benefit of seniority only to that class of ex-servicemen which joined armed forces during the period of Emergency. [Para 15] [687-F-G]

A 2. The appellants are right in pointing out that those who are joining military service even in 'peace times' are faced with difficult situations of proxy war and have also to deal with insurgency and terrorism. It is also a matter of common knowledge that these military personnel are risking their life while dealing with the aforesaid difficult situations and, in fact, the casualties and fatalities of the soldiers are on the rise. When they leave the military service, as an ex-serviceman, they not only get the benefit of appointment to the civilian post against the quota earmarked for them, they are also getting the benefit of counting of military service when their pay is fixed on their appointment to the civilian post. However, benefit of counting of military service rendered by these ex-servicemen for the purpose of seniority cannot be extended to them. Such a benefit is restricted only to those who joined armed forces during emergency due to foreign aggression. The call of service to nation during war period is on a totally different footing than joining army when the country is not facing any such foreign aggression. The Court pointed out that persons who were commissioned in armed forces when the nation was faced with foreign aggression and the cry of the time was that persons should join armed forces to defend the integrity and sovereignty of the nation. Many persons in such situations are not inclined to join the armed forces and only those with the feeling for the honour of the nation rise to such occasions. For this reason, such persons joining armed forces at that time, sacrificing their career, had to be treated as a separate class by extending them the benefit in the matter of seniority as well. However, those who joined the armed forces otherwise, they do so in look out of a career and joined such services of their own volition. They are prepared for the normal risk in service of the armed forces. Therefore, benefit of service rendered in armed forces cannot be extended to such a class for the purposes of seniority. The circumstances pointed out by appellants are nothing but those risks which are very well known and prevalent. Fact remains that these persons joined the service to make their career and on their own volition, exercising it as a matter of choice. Their cases are, therefore, on a different footing altogether. 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. This Court cannot shy away from the normal rule of fixing the seniority, 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. [Para 27] [692-B-H; 693-A-D]

Direct Recruitment Class II Engg. Officers Association & Ors. vs. State of Maharashtra (1990) 2 SCC 715 : [1990] 2 SCR 900 ; *State of West Bengal and Ors. vs. Aghore Nath Dey And Ors.* 1993 SCC (3) 371 : [1993] 2 SCR 919 – referred to.

3. In the impugned judgement, the High Court has pointed out one more pertinent aspect. It is mentioned that the benefit of past service rendered in armed forces is even given to those persons who did not even fulfil the minimum educational criteria for the service which is otherwise mandatory. Thus, grant of benefit of military service even in respect of those who join the armed forces during the emergency, is to be given only from the date when they attained the minimum eligibility criteria prescribed in the Rules for the post to which such persons are appointed. [Paras 30, 31] [694-B; 695-C]

Civil Appeal No. 657 of 2016

4. A perusal of the impugned judgment of the High Court would reveal that the administrative instructions issued by the Government stated that when a released Army Personnel has been appointed against the general un-reserved vacancy in the first instance, he should be given an option at the time of first

A **appointment to accept a reserved vacancy, even if it occurs subsequent to his appointment. However, such an option was never provided to the respondent. The vacancy became available after the appointment of respondent and since the State Government was required to give option to the respondent at the time of initial appointment to be considered against the post reserved for ex-servicemen, which was not done, therefore, respondent could not be made to suffer due to reminiscence on the part of the State Government. In the aforesaid factual background, no error is found in the judgment of the High Court. [Para 35] [696-C; 697-A-E]**

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Ex-Capt. K.C. Arora and Another v. State of Haryana and Others **(1984) 3 SCC 281 : [1984] 3 SCR 623 ;** *State of H.P. v. P.D. Attri* **(1999) 3 SCC 217 : [1999] 1 SCR 587 – referred to.**

D

Case Law Reference

[1994] 1 SCR 316	**relied on**	**Para 9**
[1997] 1 SCR 1010	**relied on**	**Para 11**
[1988] 1 Suppl. SCR 574	**relied on**	**Para 12**
[1984] 3 SCR 623	**referred to**	**Para 22**
[1993] 2 SCR 919	**referred to**	**Para 27**
[1990] 2 SCR 900	**referred to**	**Para 27**
[1999] 1 SCR 587	**referred to**	**Para 29**

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F

CIVIL APPELLATE JURISDICTION: Civil Appeal No.11060 of 2017.

From the Judgment and Order dated 29.12.2008 of the High Court of Himachal Pradesh at Shimla in CWP No.488 of 2001

G

WITH

Civil Appeal No.657 of 2016, Civil Appeal Nos.11061 and 11062 of 2017 and S.L.P. (C) No.22416 of 2017.

H

Paramjeet Singh Patwalia, Sr. Adv., Bhaskar Y. Kulkarni, Vikas Mahajan, Vinod Sharma, Varinder Kumar Sharma, Rajeev Sharma, Naresh K. Sharma, Rajeev Kumar Bansal, Akshay K. Ghai, Maneesh Pathak, Brahma Prakash, Balraj Dewan, Naresh K. Sharma, Himinder Lal, Ms.Rajni Ohri Lal, Anip Sachthey, Aditya Dhawan, Ms.Kiran Dhawan, Ms. Riya Sachthey, C.S. Ashri, Advs. for the appearing parties.

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Leave granted in Special Leave Petition (Civil) Nos. 8710 of 2009, 14361 of 2009 and 19750 of 2011.

2. In all these appeals, issue relates to the validity of 'Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal Pradesh State Non-Technical Services) Rules, 1972 (hereinafter referred to as the '1972 Rules'). These 1972 Rules provide for reservation to the Released Indian Armed Forces Personnel in non-technical services in the State of Himachal Pradesh. Provision is also made in the 1972 Rules for conferring the benefit of counting approved military service of such Released Armed Forces Personnel for the purpose of fixation of their seniority and pay in civil employment. It is the validity of these Rules which is the subject matter in most of these appeals. However, for the sake of convenience and better understanding, we would take note of the events from Civil Appeal No.11060 of 2017 @ SLP (C) No. 8710 of 2009.

3. The appellants in these appeals are Released Armed Forces Personnel. They were initially taken in the Army where they served for few years and after serving for certain years, they were released from the Army. Still young and far away from the age of retirement that is prescribed for civilian post, they applied for the post of Assistant District Attorney in the State of Himachal Pradesh (hereinafter referred to as the 'State') and were successful in getting appointment as Assistant District Attorneys with the Department of Prosecution of the State. In terms of 1972 Rules, they were accorded the benefit of their approved military service for the purposes of fixation of their pay and seniority as Assistant District Attorneys. Details of appointments of these appellants are as under:

Appellant's Name	Date of Joining Armed Forces and rank	Date of release from Armed forces and rank	Date of joining civil employment (prosecution department)	Date of acquiring essential qualification	Deemed date of appointment
R.K. Barwal (Appellant No. 1)	24.04.1981 (As Airman)	10.09.1997 (As Sergeant)	28.12.2001 (Appointed as ADA/APP)	1991 (LLB) + 2 years experience	20.03.1989 (By giving 12 years antedated seniority)
D.S. Parmar (Appellant No. 2)	21.06.1986 (As Havaldar Clerk)	21.07.2001 (As Naib-Subedar)	19.10.2006 (Appointed as ADA/APP)	1991 (LLB) + 2 years experience	09.09.1991 (By giving 15 years antedated seniority)
S.S. Pathania (Appellant No. 3)	16.01.1980 (As Seaman)	28.02.1999 (As Master At Arms)	18.11.2003 (Appointed as ADA/APP)	1997 (LLB) + 2 years experience	29.08.1986 (By giving 17 years seniority)
N.S. Verma (Appellant No. 4)	08.01.1974 (As Seaman)	31.01.1989 (As Petty Officer)	20.09.1996 (Appointed as ADA/APP)	1984 (LLB) + 2 years experience	20.03.1989 (By giving 12 years seniority)

As is clear from the aforesaid chart, though these appellants joined as Assistant District Attorneys with the State on later dates, they were given the seniority from the back/earlier date with the application of 1972 Rules by counting their approved military service. Their pay was also fixed accordingly.

4. At this stage, we may reproduce the relevant provisions of 1972 Rules. Primarily, we are concerned with Rules 3(1) and 5 (1). The Preamble as well as the aforesaid Rules of the 1972 Rules read as under:

"Preamble

No. 11-76/71-GA-A—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, and all other powers enabling him in this behalf, the Governor, Himachal Pradesh, hereby makes the following Rules regulating the reservation of vacancies in Himachal State, Non-Technical Services, for the Demobilised Emergency Commission Officers,

Short Service Regular Commission Officers, Junior Commissioned Officers, Non-Commissioned Officers and other Ranks of the Armed Forces of the Indian Union (hereinafter called the Released Indian Armed Forces Personnel), and the recruitment of such officers/personnel on such vacancies, namely:

3. Reservation of vacancies:

(1) Fifteen percent vacancies in respect of all posts, 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...."

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)."

5. It may also be mentioned here that the State Government has framed similar Rules conferring this kind of benefit on the Released Armed Forces Personnel in Administrative Services as well. These Rules were framed in the year 1974 and are called the 'Demobilised Armed Forces Personnel (Reservation of Vacancies in the Himachal Pradesh Administrative Services) Rules, 1974 (hereinafter referred to as the '1974 Rules'). Though, the 1974 Rules are not the subject matter of these appeals, purpose for referring to these Rules is that the validity of these Rules was also challenged and the matter had come up to this Court. To that extent, reference to these Rules becomes relevant and the outcome of the proceedings would be mentioned at the appropriate stage.

6. When the seniority of the appellants was fixed in the aforesaid manner as given in the table above, the result was that they were given

A seniority over and above some of those appointees who came in the general category and even when they were appointed as Assistant District Attorneys, prior in point of time. These persons, naturally, felt aggrieved by this favourable treatment accorded to the appellants, Respondent Nos. 3 to 5 herein as well as two other Assistant District Attorneys, thus, approached the State Administrative Tribunal by filing Original Application (OA), inter alia, challenging the *vires* of Rule 5(1) of 1972 Rules insofar as it conferred benefit of counting of approved military service upon the appellants towards fixation of their seniority. They prayed for striking down Rule 5(1) to the extent it confers seniority upon such Released Armed Forces Personnel with a specific prayer that deemed dates of appointment assigned to the appellants be declared as illegal. They also prayed for issuance of directions to the effect that these appellants be given seniority from the actual date of appointment as Assistant District Attorneys or alternatively from the dates they acquired eligibility for the post, viz., degree of LI.B. Here, we may mention that these appellants had obtained LL.B. degree later on, but they were law graduates as on the date when they applied for the post of District Attorney and were eligible to be considered for the said post. However, the grievance of Respondent Nos. 3-5 was that seniority is given to them, by counting military service, from the dates when they were not law graduates and thus not even eligible for the post, for want of requisite qualifications, on that date.

7. The State Administrative Tribunal, after hearing the parties, dismissed the OA filed by the Respondent Nos. 3-5 vide judgement dated January 12, 2001, thereby upholding the validity of Rule 5(1) of 1972 Rules.

8. These respondents challenged the decision of the State Administrative Tribunal by filing writ petitions in the High Court. The High Court has, vide impugned judgment, partially struck down Rule 5(1) of the 1972 Rules. Relying upon the decision of this Court in ***Ram Janam Singh vs. State of Uttar Pradesh and another***[1], the High Court has held that such a benefit of counting past service rendered in the armed forces would be admissible only to those personnel who had joined the forces during the period of Emergency and would be inadmissible in case of ex-servicemen who had joined the armed forces at the time of peace.

[1](1994) 2 SCC 622

9. The result of the aforesaid judgment of the High Court is that the appellants stand deprived of the period of service rendered by them in armed forces for the purposes of seniority as they had not joined the said service during the period of emergency. Since, the High Court has rested its decision by relying upon ***Ram Janam Singh***[1] case and few other cases to the same effect, before proceeding further we would like to discuss these judgments and law laid down therein.

10. ***Ram Janam Singh***[1] was a case wherein the judgment of the Allahabad High Court was called into question. It pertained to U.P. Non-Technical (Class-II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1973. Under these Rules, benefit was confined to those ex-servicemen who had joined service in the armed forces during the period when the country was under the state of emergency. One person who had joined service in the armed forces during the period when the Emergency was not in operation challenged the non-grant of the benefit of Rules to him on the ground that there was no reasonable or rational basis for excluding the period from January 10, 1969 when the Emergency was lifted till December 03, 1971 when the same was re-imposed. The writ petition was allowed by the Allahabad High Court. Thereafter, Ram Janam Singh filed an appeal before the Apex Court which was allowed. The Apex Court held as follows:-

> "10. From time to time controversy regarding inter se seniority is raised between persons recruited from, different sources to the same service. In past, notional seniority used to be given to one group of officers, purporting to mitigate their hardship or to rectify any alleged wrong done to them in the process of recruitment or promotion. Ultimately, it was realised that if liberty is given to fix seniority of an officer or group of officers belonging to a particular category with reference to a notional date, that will lead to great uncertainty in public service. The date of entry into a particular service was considered to be the most safe rule to follow while determining the inter se *(sic)* one officer or the other or between one group of officers and the other recruited from the different sources. After referring to different judgments of this Court, a Constitution Bench in the case of ***Direct Recruitment Class II Engineering Officer's Association*** v. ***State of Maharashtra*** [(1980) 2 SCC 715]: (AIR 1990 SC 1607), came to the same

A conclusion. The same has been reiterated in the case of ***State of West Bengal*** v. ***Aghore Nath Dev*** [(1993) 3 SCC 371]. It is now almost settled that seniority of an officer in service is determined with reference to the date of his entry in the service, which will be consistent with the requirement of Articles 14 and 16 of the B Constitution. Of course, if the circumstances so require a group of persons can be treated a class separate from the rest, for any preferential or beneficial treatment while fixing their seniority. But, whether such, group of persons belong to a special class for any special treatment, in matters of seniority has to be decided on objective consideration and on taking into account relevant factors C which can stand the test of Articles 14 and 16 of the Constitution. Normally, such classification should be by statutory rule or rules framed under Article 209 of the Constitution. The far-reaching implication of such Rules need not be impressed, because they purport to affect the seniority of persons, who are already in service. For promotional posts, generally the rule regarding merit D and ability or seniority-cum-merit is flawed in most of the services. As such the seniority of an employee in the later case is material and relevant to further his career, which can be affected by factors, which can be held to be reasonable and rational.

E 11. It appears that the framers of the Rules 1973 and 1980, while treating the persons, who had been commissioned on or after November 1, 1962 but before January 10, 1968 and again on or after December 03, 1971, took into account the circumstances and the background in which such persons were commissioned in Armed Forces, i.e., when the nation was faced with foreign F aggressions and the cry of the time was that persons should join Armed Forces to defend the integrity and sovereignty of the nation. It is well-known that many persons in such situation are not inclined to join Armed Forces and only those with feeling for the honour of the nation rise to such occasions. In this background, if such persons have been treated as a separate class for extending any G benefit in the matter of seniority, none can make any grievance and their classification can be upheld even in the light of Articles 14 and 16 of the Constitution.

12. But, we fail to understand as to how persons, who joined after the emergency was over, i.e., after January 10, 1968 and

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before December 03, 1971, when another emergency was imposed in view of the foreign aggression can be treated at par or on the same level. It needs to be pointed out that such persons were in look out of a career and joined the Armed Forces of their own volition. It can be presumed that they were prepared for the normal risk in the service of the Armed Forces. Those who joined Armed Forces after November 1, 1962 or December 3, 1971, not only joined Armed forces but joined a war which was being fought by the nation. If the benefits extended to such persons, who were commissioned during national emergencies are extended even to the members of the Armed Forces who joined during normal times, members of the Civil services can make legitimate grievance that their seniority is being affected by persons recruited to the service after they had entered in the said service without there being any rational basis for the same.

13. xxx xxx xxx

14. Can it be said that the persons who had joined army after the declaration of emergency due to foreign aggression and those who joined after the war came to an end stand on the same footing? Those who joined Army after revocation of emergency joined army as a career. It is well known that many persons, who joined army service during the foreign aggression could have opted for other career or service. But the nation itself being under peril, impelled by the spirit to serve the nation, they opted for joining Army where then risk was writ large. No one can dispute that such persons formed a class by themselves and by Rules aforesaid an attempt has been made to compensate those who returned from war if they compete in different service. <u>According to us, the plea that even persons, who joined army service after cessaion of foreign aggression and revocation of emergency, have to be treated like persons, who have joined army service during emergency, due to foreign aggression is a futile plea and should not have been accepted by the High Court. It need not be impressed that whenever any particular period spent in any other service by a person is added to the service to which such person joins later, it is bound to affect the seniority of person who have already entered in the service.</u> As such any period of earlier service should be taken into account for determination of seniority

A in the later service only for some very compelling reasons, which stand the test of reasonableness and on examination can be held to be free from arbitrariness."

(*Emphasis supplied*)

B 11. This dictum was reiterated in ***Chittranjan Singh Chima and Another v. State of Punjab and Others***[2] wherein this Court has held that the person appointed to defence services under the normal recruitment, before the proclamation of (External Emergency on 26.10.1962, were not covered under the expression "military service" as defined in the Punjab Government National Emergency (Concession) C Rules, 1965. Hence, the appellants who were enrolled in Indian Air Force on December 07, 1957 and September 03, 1959 respectively and were released in 1974 on completion of 15 years of service, held not entitled to the benefit of this service for seniority and other consequential benefits because they were not appointed during emergency but in the regular process.

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12. Another case taken note of by the High Court is ***Narendra Nath Pandey and Other vs. State of U.P. and others***[3]. In this case, Rule 6 of the aforesaid U.P. Rules of 1973 was being dealt with, the relevant portion whereof is as under:

E "R. 6 Seniority and pay—

(1) Seniority and pay of candidates appointed against the vacancies reserved under sub-rule (1) of Rule 3, shall be determined on the assumption that they entered the service concerned at their second opportunity, of competing for recruitment, and they shall be F assigned the same year of allotment as successful candidates of the relevant competitive examination."

The issue before the Court was as to whether such ex-service personnel could be given the seniority even when they failed in first attempt in securing civil employment and further whether the benefit of service rendered in armed forces could be given even G if there was a significant time lag between release of such personnel by the army and securing the civil employment. Interpreting the aforesaid Rule, these questions were answered in the following manner:

[2] (1997) 11 SCC 447

H [3] AIR (1988) SC 1648

"13. It is true that Rule 6 does not provide for the period between the demobilisation and recruitment of a war service candidate in the civil service. Nor does it forbid consideration of such period. It cannot, however, be denied that after the discharge from war service, there will be some lapse of time for the recruitment of a candidate in the Provincial Civil Service. There is a question of competing in the examination. Rule 6 does not provide for any gap to be taken into consideration, yet it is apparent that some reasonable period has to be allowed to a candidate so as to enable him to avail himself of the opportunity of appearing at the competitive examination for his recruitment in the Provincial Civil Service. It cannot be gain said that to compete in the examination, a candidate has to make preparation for that competitive examinations are generally difficult and, in our opinion, at least two years' time should be allowed to a candidate, after his discharge, for his preparation for the competitive examination and that will arise in the next year, that is, in the third year of his discharge from the armed forces. In other words, he should be allowed three years for competing in the relevant examination for recruitment in the civil service.

14. Even after he becomes successful, he is not recruited immediately. There is question of availability of vacancies and posting. It is common knowledge that some time is taken for posting. On a proper construction of Rule 6, the period spent by a candidate for competition in the examination which, in our opinion, will not be more than three years, and the period of time taken for his recruitment or posting will also be taken into consideration for the purpose of computing the seniority of a war service candidate. Thus, if a candidate is discharged in the year 1968, he should be given three years' time to avail himself of the opportunity of competing in the examination. Suppose, he is successful in the examination in 1971 and posted in 1973. In view of Rule 6, he would be deemed to have entered service at the second opportunity of competing for recruitment and the entire period from the date of assumed entry in the service up to his recruitment in 1973 shall be taken into account for the purpose of computing seniority and pay. If, however, a candidate does not avail himself of the opportunity within three years of his discharge from war service

A or takes the examination but not avail himself of the opportunity within three years of his discharge from war service or takes the examination but becomes unsuccessful, the period between his discharge and subsequent recruitment will not be taken into account for the purpose of computing the seniority. Rule 6 should be given a reasonable interpretation. We do not find any reason to interpret
B Rule 6 in a way which will be doing injustice to the appellants who have been recruited under the Service Rules after competing successfully in the examination.

15. We agree with the High Court that the 1973 Rules as also the 1980 Rules are quite legal and valid. We are, however, of the
C view that under Rule 6 of the 1973 Rules or Rule 5 of the 1980 Rules only a reasonable period, namely, the period of three years, required for taking the examination and the time taken for recruitment or posting, as discussed above, along with the period of war service, but no other period, will be taken into consideration
D for the purpose of computing the seniority and pay. The impugned seniority list prepared in 1976 and also that prepared subsequently in the year 1980 cannot be sustained, as they have been prepared by taking into consideration the entire period between the discharge and the recruitment without any reservation for computing the seniority.
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(Emphasis Supplied)"

13. Dicta laid down in the aforesaid judgments of this Court are apparent and explicit. The Court has held that there exists an intelligible criterion for providing quota to ex-servicemen. The object is to rehabilitate
F the ex-servicemen which can be achieved by providing reservations to them. Therefore, insofar as provision made in the Rules reserving a particular quota, within reasonable limits is concerned that is permitted and does not offend the provisions of Article 14 of the Constitution. There is an intelligible differentia having nexus with the objective sought to be achieved. Likewise, provision in the Rules for protecting the pay is
G also held to be permissible.

14. The bone of contention, however, is in respect of grant of benefit of seniority to these ex-servicemen on joining civilian service, by counting the service rendered in the armed forces for the purpose of seniority in the department which these ex-servicemen join. Here there
H is a conflict of interest that arises between those civilians who join a

particular service earlier than ex-servicemen but are rendered juniors to the ex-servicemen joining later for the reason that ex-servicemen are benefited with their past service in the armed forces. As far as this aspect is concerned, the judgments noted above have held that provision in the Rules giving benefit of service in armed forces to those ex-servicemen who joined during Emergency, are perfectly justified. It is based on the rationale that sacrifice of such personnel in armed forces who joined the service in war times is much more than those persons who joined the armed forces during peace period. Reasoning proceeds on the basis that when a state of Emergency is declared and the nation is at war or facing the threat of aggression some young persons out of a feeling of patriotism join the armed forces knowing fully well that they are putting their lives at stake. They give up their chance to join civil service and live a comfortable life in the main cities of the country. Drawing this distinction, this Court has granted the benefit of service rendered by these ex-servicemen while in armed forces, is held to be valid when they were recruited during Emergency. However, the Court has held that such a benefit should not be available to those who join the armed forces at a period when the country was not in conflict with any other country/enemy country. The denial of benefit to such persons is on the premise that these persons stand on a totally different footing from those who join service during emergency period. These persons weigh all the pros and cons and after taking into consideration all factors come to the conclusion that they have a good future in the armed forces. They join the armed forces as a profession like any other.

15. On this premise, the Court has held that the two categories of ex-servicemen formed two separate classes and are not equal to each other. Thus, latter category is not entitled to counting of their service rendered in armed forces for the purpose of their seniority on joining the civilian post. Following this dicta laid down in the aforesaid judgments, the High Court has read down the rule in-question by limiting the benefit of seniority only to that class of ex-servicemen which joined armed forces during the period of Emergency.

16. This position is summed up by the High Court in the following manner:

> "We are of the view that such benefit should have been limited to those persons who joined during the period of emergency only. Otherwise the Rules would become unconstitutional. The Apex

A Court in a number of cases including those quoted above has clearly held that efficiency should not suffer on account of reservation. Reservation can be held to be reasonable as long as efficiency does not suffer. It is also well settled that the seniority of an officer in service is determined with reference to the date of entry in the service. This is consistent with Articles 14 & 16 of the Constitution. Exceptions can be made only in special circumstances. However, who are entitled to such benefits has to be decided objectively. Therefore, the rules in this behalf must be framed by taking into consideration the effect which such reservation will have on efficiency of the service and the manner in which it will affect the seniority of persons who are already in service.

We may approach this issue from another angle. The Apex Court both in ***Ram Janam Singh's case*** as well as in ***Chittranjan Singh Chima's*** case clearly held that the ex-serviceman who joined the armed forces during normalcy could not be equated with ex-servicemen who joined the armed forces during emergency. The Rule under challenge in fact equates these two. Therefore, two unequals have been treated as equals. What may be valid or reasonable for the ex-servicemen who stand on higher pedestal, i.e., ex-servicemen who joined during emergency may not be necessarily be valid or legal for those who stand on a lower footing. The civil servants who are placed lower to such ex-servicemen can genuinely complaint that they are the victims of arbitrary discrimination as clearly pointed out in ***Ram Janam Singh's case.*** Efficiency of the service is also bound to suffer if all ex-servicemen are given this benefit."

17. It becomes apparent from the aforesaid discussion that while deciding against the appellants, the High Court has followed the judgments of this Court and the ratio has also been applied correctly. Therefore, the judgment of the High Court cannot be faulted with. Though, Mr. Paramjeet Singh Patwalia, learned senior counsel for the appellant had tried to distinguish the decision of this Court in Ram Janam Singh and Chittranjan Singh Chima cases, with the submission that the Rules in those two cases were different, however, it is difficult to accept this contention of the appellant having regard to the clear dicta and the ratio behind the said judgments which has already been discussed above.

18. Faced with this, another fervent plea made by the learned senior counsel is to the effect that going by the prevailing conditions in the country and the manner in which armed forces personnel have to perform their duties, there is hardly any difference between the emergency and the peace time. It was submitted that post 1971 war, Pakistan has waged proxy war against India which continues unabated. Life risk and casualties of soldiers during peace time are more as compared to the casualties in the war. Insurgency like conditions existed earlier in Punjab and now continues in Kashmir Valley besides in North Eastern States. Almost every day there are casualties of the personnel deployed in such affected areas. Besides fighting insurgency conditions and terrorism, soldiers have to participate in various operations like Operation Vijay (Kargil Operation), Megadoot, Pawan, Prakaram, Rakshak, Bombay Operation etc. which take place during non-emergency period and risk to life and fatalities of soldiers during such operations is also as high as during the wars.

19. In a nutshell, the submission is that the distinction which was drawn by this Court between those persons who joined armed forces in peace time and those who joined during emergency is totally blurred. Emphasis of Mr. Patwalia was that even during the so-called peace time, armed forces are faced with warlike situations and, therefore, they should now be treated at par with those ex-servicemen who joined the military service during the period of emergency. On that basis, it was submitted that the cases decided by this Court and referred to above need reconsideration.

20. Insofar as official respondents, State of Himachal Pradesh and Secretary Personnel to the Government of Himachal Pradesh (Respondent Nos. 1 and 2) are concerned, they have supported the arguments of the appellants. In fact, even State has challenged the impugned judgment and its appeal is numbered as Civil Appeal No. _____ of 2017 (@ SLP(Civil) No. 14361 of 2009). These appeals were primarily contested by the private respondents who are civilians and were appointed to these posts on various dates and had filed the writ petition in the High Court which has been allowed by the High Court. In addition, an intervention application is filed by some other persons belonging to this very class and they have also supported the impugned judgment.

A 21. Insofar as private respondents, namely, Respondent nos. 4 and 5 as well as interveners are concerned, submission of the learned counsel appearing on their behalf was that the judgment of the High Court was in accord with the law laid down by this Court and, therefore, there was no reason to interfere with the same. It was submitted that the background in which 1972 Rules were framed had to be kept in B mind. In this behalf, their submission was that China had attacked the Nation on October 20, 1962 and proclamation of Emergency was made on October 26, 1962. It was found that there was acute shortage of young personnel in the Armed Forces who could defend the country and accordingly a number of concessions were announced by the Central C and the State Governments for those persons who joined these forces including reservation of posts, counting of the period served in the military for seniority and protection of pay and pension in the civil posts.

22. He further stated that after Indo-China and Indo-Pak wars, a review of the manpower required by the armed forces was made in the D year 1968 and all those persons who were in excess were "Demobilised" in a phased manner. To rehabilitate the demobilised person Central and the State Governments had framed Rules. Demobilisation was onetime operation and demobilisation was stopped by 1975. It was pointed out that the first such Rules were framed by Punjab as Punjab National Emergency Concession Rules, 1965 and notified on July 20, 1965 as has E been mentioned in ***Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others***[4].

23. These respondents, thus, supported the rationale by drawing distinction between the two classes of ex-servicemen, namely, those who had joined armed forces during Emergency and those who had not F and it is only the first category which could be entitled to the benefit of past service. It was also submitted that if such a benefit of past service is given, many such ex-servicemen would become entitled to seniority from a date when they were not even possessing a degree in law or having any experience or practice as a lawyer which is required for the G post. It was also submitted that some of these ex-servicemen would be getting seniority from the dates on which they were not even enrolled as advocates with the Bar Council and had not completed experience of three years' practice as advocates which could not be countenanced. It was, thus, submitted that if the benefit under the 1972 Rules is extended

[4](1984) 3 SCC 281

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to all ex-servicemen, it would, undoubtedly, affect the efficiency of service. Furthermore, the same would also cause heart burn and affect the morale of the competent persons who joined the services much earlier and are still placed much lower in seniority to the ex-servicemen, who invariably get seniority, from the date when they did not even possess the bare minimum eligibility for appointment. It was submitted that Rule for reservation of vacancies may not be stretched so far as to include seniority, pay-scale (Rule 5.1) and provision of vacancies to the dependents and continued reservation of vacancies (Rule 3.1) of the Demobilised Rules. Will these Rules made under Article 309 of the Constitution stand the test of Article 16 of the Constitution to which Article 309 is subject to?

24. It was pointed out that a number of ex-servicemen had superseded these respondents and interveners which had a cascading effect on the service career of the direct recruits. It was specifically pointed out that Sh. Purander Sharma was the topper of the batch and was appointed as Assistant District Attorney on July 20, 1990 along with the other direct recruits, intervener No. 2 Sh. Ravi Kant Kaushal while, the ex-servicemen, Sh. Dharam Pal Sharda, Sh. Sansar Chand, Sh. Narain Singh Verma, Sh. Gian Chand Rana and Sh. R.K. Barwal were appointed on much later dates. However, these ex-servicemen were given the benefit of Rule 5(1) of the 1972 Rules and were assigned a deemed date of appointment on a much earlier date. Consequently, Sh. Purander Sharma (Respondent No. 5) and other similar situate persons, were placed much lower in the seniority to these ex-servicemen, who got seniority from the date when they did not even possess the bare minimum eligibility for appointment. It was emphasized that Sh. Purander Sharma got promoted to the post of Deputy District Attorney in the year 2005 after serving as Assistant District Attorney for a period of more than 15 years against minimum requirement of seven years, while, Sh. R.P. Sharma, Sh. Dharam Pal Sharda, Sh. Sansar Chand, Sh. Narain Singh Verma, Sh. Gian Chand Rana and Sh. R.K. Barwal (Ex-servicemen) were promoted thrice within a period of 15 years from the date of their actual appointments, i.e., on July 10, 1998, June 01, 1994, June 14, 1993, September 20, 1996, May 26, 1999 and December 28, 2001 respectively.

25. On that basis, it was argued that there was no reason to take a different view or refer the matter to a larger Bench for consideration.

A 26. After giving our due consideration to the respective submissions and minutely going through the judgments of this Court discussed above, which have been relied upon by the High Court, we do not see any reason to deviate therefrom nor do we find any justification in referring the issue to the larger Bench.

B 27. No doubt, Mr. Patwalia is right in pointing out that those who are joining military service even in 'peace times' are faced with difficult situations of proxy war and have also to deal with insurgency and terrorism. It is also a matter of common knowledge that these military personnel are risking their life while dealing with the aforesaid difficult situations and, in fact, the casualties and fatalities of the soldiers are on C the rise. When they leave the military service, as an ex-serviceman, they not only get the benefit of appointment to the civilian post against the quota earmarked for them, they are also getting the benefit of counting of military service when their pay is fixed on their appointment to the civilian post. However, benefit of counting of military service rendered D by these ex-servicemen for the purpose of seniority cannot be extended to them. Such a benefit is restricted by this Court only to those who joined armed forces during emergency due to foreign aggression. This special category was carved in the judgments referred to above. This Court, while doing so, categorically and repeatedly held that the call of service to nation during war period is on a totally different footing than E joining army when the country is not facing any such foreign aggression. The Court pointed out that persons who were commissioned in armed forces when the nation was faced with foreign aggression and the cry of the time was that persons should join armed forces to defend the integrity and sovereignty of the nation, it was stressed that many persons F in such situations are not inclined to join the armed forces and only those with the feeling for the honour of the nation rise to such occasions. For this reason, such persons joining armed forces at that time, sacrificing their career, had to be treated as a separate class by extending them the benefit in the matter of seniority as well. However, those who joined the armed forces otherwise, they do so in look out of a career and joined G such services of their own volition. They are prepared for the normal risk in service of the armed forces. Therefore, benefit of service rendered in armed forces cannot be extended to such a class for the purposes of seniority. The circumstances pointed out by Mr. Patwalia are nothing but those risks which are very well known and prevalent. Fact remains

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that these persons joined the service to make their career and on their own volition, exercising it as a matter of choice. Their cases are, therefore, on a different footing altogether. 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 Dev***, 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.

28. We, therefore, are of the considered opinion that there is no reason to deviate from the principle laid down by this Court in ***Ram Janam Singh*** and ***Chittranjan Singh Chima***. This contention of the appellant is, thus, rejected.

29. Mr. Patwalia also submitted that this Court in its decision in the case of ***State of H.P. vs. P.D. Attri***[5] has also held that each State has its own individualistic way of governance under the Constitution. One State is not bound to follow the Rules and Regulations applicable to the employees of other State and it is not bound to follow every change brought in the Rules and Regulations in other State even if the same were adopted initially. In this hue, it was submitted that presently the percentage of reservation of ex-servicemen under the Rules of 1972 is to the extent of 15% in respect of all posts viz. class I, II, III and IV (Rule 3(1) of 1972 Rules). The 1972 Rules apply to each and every department of State Government except the administrative services, judiciary and technical services for which there are separate rules. There are approximately more than 2 lac employees in the State of H.P. who are governed by the 1972 Rules. Thus, approximately there would be

[5] (1999) 3 SCC 217

A 30,000 to 35,000 ex-servicemen who have been conferred the benefit of seniority under the Rules of 1972.

This contention, however, needs to be rejected in view of the detailed discussion carried out hereinabove.

B 30. In the impugned judgement, the High Court has pointed out one more pertinent aspect. It is mentioned that the benefit of past service rendered in armed forces is even given to those persons who did not even fulfil the minimum educational criteria for the service which is otherwise mandatory. Discussion in this behalf is as follows:

C "In our considered opinion, the State Government did not at all take into consideration these aspects of the matter. No material has been placed on record to show whether such objective criteria were followed while framing the Rules. We also find that in the State of Himachal Pradesh benefit of past service rendered in the armed forces is even given to those persons who did not even D fulfil the minimum educational criteria for the service which is otherwise mandatory. Take for example the present case. According to the R&P Rules relating to District Attorneys, the minimum eligibility criteria is a degree in law with three years experience as a lawyer. Ex-servicemen who were not even possessing a degree in law nor having any experience of practice E are being given the benefit of the past service rendered in the Army. Immediately on joining the service they become senior to persons who have come from the general category and joined service much earlier to them. This is bound to affect the efficiency in the service. This will also cause heart burning. Competent F persons who joined from the general category are placed lower in seniority to those who may have become eligible to even join service much after they joined.

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A person who does not have the minimum educational qualification G would not be even eligible to apply for the post. When the person is not even eligible to apply for the post it does not stand to reason that he can be given benefit of service rendered in the Army in such a post. The purpose of the Rules is to rehabilitate the army man. The rehabilitation is done by providing them reservation but H when it comes to giving them the benefit of seniority the Rule

becomes unconstitutional if the candidate being given the benefit is ineligible to hold the post. Even the State is not clear as to from which date this benefit is to be given. In some cases like in the case of respondent No. 4 and Sh. G.C. Rana the benefit of past service has been given only from the date these persons acquired the minimum qualifications but in the cases of some other persons this benefit has been given regardless of this date. This practice is also discriminatory and violative of Article 14 of the Constitution of India."

31. Thus, grant of benefit of military service even in respect of those who join the armed forces during the emergency is to be given only from the date when they attained the minimum eligibility criteria prescribed in the Rules for the post to which such persons are appointed.

32. Since we have already held that insofar as these appellants are concerned, they are not entitled to get the period served in armed forces counted for the purpose of seniority as Assistant District Attorney, this question does not arise for consideration in these cases.

33. As a result, Civil Appeal No. 11060 of 2017 arising out of SLP(C) 8710 of 2009, Civil Appeal No. 11061 of 2017 arising out of SLP(C) 14361 of 2009 and Civil Appeal No.11069 of 2017 arising out of SLP(C) 19750 of 2017 are dismissed.

34. Special Leave Petition (Civil) No.22416 of 2017 (arising out of SLP(C) ....D. No. 20104 of 2017) is also filed by ex-servicemen who have joined Department of Prosecution of the State. They are five in number. However, they have challenged earlier judgment of the High Court, pronounced in Civil Writ No. 620 of 2003 on November 16, 2007. We do not see any reason to entertain this Special Leave Petition as it is filed after a period of 10 years. In any case, the petitioners herein have raised the same issues which are raised by the appellants in the aforesaid appeals and those appeals have been dismissed finding no merit therein. Accordingly, this special leave petition is also dismissed both on limitation as well as on merits.

Civil Appeal No. 657 of 2016

35. Insofar as Civil Appeal No. 657 of 2016 is concerned, it is filed by State of Himachal Pradesh against the respondent who was an ex-serviceman appointed as Peon against unreserved post with effect

A from January 01, 1975. The issue in that case was different though he was not given the benefit of Army service towards seniority, it was primarily for the officer that the respondent was appointed against unreserved post and on that basis the Government took the view that he could not be given the benefit available to the ex-servicemen under the 1972 Rules. Respondent approached the Administrative Tribunal, B Himachal Pradesh and his O.A. was allowed. Against the judgment of the Tribunal, State filed writ petition which has been dismissed by the High Court vide judgment dated May 22, 2014 against which the aforesaid appeal is preferred by the State. A perusal of the judgment of the High Court would reveal that the administrative instructions issued by the C Government that when a released Army Personnel has been appointed against the general un-reserved vacancy in the first instance, he should be given an option at the time of first appointment to accept a reserved vacancy, even if it occurs subsequent to his appointment. The High Court noted that such an option was never provided to the respondent. The vacancy became available after the appointment of respondent as D Peon on January 01, 1975 and since the State Government was required to give option to the respondent at the time of initial appointment to be considered against the post reserved for ex-servicemen, which was not done and, therefore, respondent could not be made to suffer due to reminiscence on the part of the State Government. In the aforesaid E factual background, we do not find any error in the judgment of the High Court and, therefore, dismiss, this appeal.

Divya Pandey Appeals dismissed.