PETITIONER:
HAV BHAGAT SINGH, ETC.

Vs.

RESPONDENT:
STATE OF HARYANA & ANR., ETC.

DATE OF JUDGMENT: 15/03/1996

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
VERMA, JAGDISH SARAN (J)
VENKATASWAMI K. (J)

CITATION:
1996 AIR 1705 1996 SCALE (2)851

ACT:

HEADNOTE:

JUDGMENT:

WITH

Writ Petition (C) No. 571 of 1994

J U D G M E N T

BHARUCHA, J.

The appeal aforementioned impugns the order of summary dismissal of a writ petition filed by the appellant in the High Court of Punjab & Haryana. Though the order only says "dismissed", it was clearly passed by reason of the judgment of this Court in Dhan Singh & Ors. vs. State of Haryana & Ors., 1991 Supp. (2) S.C.C. 190. The writ petition arises upon facts similar to those in the appeal and it seeks re-consideration of the aforementioned judgment.

The facts that we state are of the appeal. The appellant was enrolled as a Sepoy in the Army on 30th January 1959. He served in the Army until some date in the year 1976, by which time he had been promoted to the post of Hawaldar. In 1978 the appellant joined the service of the State of Haryana (the first respondent) as a clerk.

The Government of Punjab had framed the Punjab National Emergency (Concession) Rules, 1965, and they were adopted by the State of Haryana when it was formed. These Rules gave benefits to persons who had been in military service before joining Government service. "Military service" was defined in Rule 2 thus :

> "For the purposes of these Rules the expression Military Service means enrolled or Commissioned service in any of the three Wings of the Indian Armed Forces (including service as a Warrant Officer) rendered by a person during the period of operation of the proclamation of Emergency made by the President under Article 352 of the Constitution of India on

> October 26, 1962 or such other service as may hereafter be declared as Military Service for the purposes of these Rules. Any period of Military Training followed by Military Service shall also be reckoned as Military Service".

On 4th August, 1976, the aforesaid definition was amended by the State of Haryana so that it read thus :

> "For the purposes of these rules the expression 'Military Service' means the service rendered by a person who had been enrolled or commissioned during the period of operation of the proclamation of Emergency made by the President under Article 352 of the Constitution of India on October 26, 1962 in any of the 3 Wings of the Indian Armed Forces (including the service as a Warrant Officer) such other service as may hereafter be declared as Military service for the purpose of these Rules. Any period of Military Training followed by Military service shall also be reckoned as Military Service."

It will be seen that military service as originally defined meant service, enrolled or commissioned, in the armed forces rendered during the period of operation of the Emergency. (The Emergency was that proclaimed in 1962). By the amended provision military service meant only the service that was rendered by a person who was enrolled or commissioned in the armed forces during the period the Emergency remained in force. The amendment, therefore, curtailed the definition of military service and excluded therefrom those who had been enrolled or commissioned before the proclamation of the Emergency and had served during its operation.

The validity of the retrospective application of the amended definition of military service came to be considered by this Court in Ex. Capt. K.C. Arora and Anr. vs. State of Haryana and Ors., 1984-3 S.C.C. 281. The appellants were persons who had already entered Government service. It was held that the amendment "Restricted the benefits of military service upto January 10, 1968, the date on which the first emergency was lifted with the result that the vested rights which had accrued to the petitioners in 1969, 1970 and 1971 have been taken away". The notification amending the definition of the expression 'military service' in Rule 2 was declared to be ultra vires the Constitution insofar as it prejudicially affected persons who had already acquired rights.

The validity of the amended definition came up for the consideration of this Court again in Dhan Singh & Ors. vs. State of Haryana & Ors., 1991 Supp (2) S.C.C. 190, and this is the judgment whose reconsideration is sought. It was argued that the amendment confining military service to those who had joined during the operation of the Emergency, that is, between 26th October, 1962, ant 10th January, 1968, and denying the same benefit to those who had joined prior to the proclamation of the Emergency was unreasonable, arbitrary and based on no classification. The contention was repelled. It was held that the State of Haryana could amend

the Rules and withdraw the concession in exercise of the power conferred under Article 309 of the Constitution. It was open to the State to lay down any rule for determining seniority in service and the court could not interfere unless it resulted in inequality of opportunity among employees belonging to the same class. When a rule was challenged as denying equal protection, the question for determination was not whether it resulted in inequality but whether there was some difference which bore a just and reasonable relation to the object of the legislation. The court had to examine whether the classification rested upon differential discriminating the persons or things grouped from those left out and whether such differential had a reasonable relation t the object sought to be achieved. The Emergency had been imposed in 1962 on account of the aggression by Chinese forces on Indian territory. In order to attract young men to join military service at this critical juncture, the Central and State Governments had promised them benefits. The young men who had joined the military service during the Emergency and those who were already in service and had been compelled to serve during the Emergency formed two distinct classes. Those who had joined the army before the proclamation of the Emergency had chosen the career voluntarily and their service during the Emergency was as a matter of course. Those who had enrolled or were commissioned during the Emergency, on the other hand, had, on account of the call of the nation, joined the army at a critical juncture to save the motherland. The latter formed a class by themselves and could not be equated to those who had joined the army before the proclamation of the Emergency. Benefits had been promised to persons who had heeded the call of the nation at that critical juncture because they had foregone job opportunities. The differential was, therefore, intelligible and had a direct nexus to the object sought to be achieved. The amendment could not, therefore, be held to be discriminatory or arbitrary.

On 7th October, 1991, the Chief Secretary of the State of Haryana addressed a circular letter which referred to the judgment in Dhan Singh’s case and clarified that the benefits of military service "may not be withdrawn from those Ex-servicemen who had joined the State Services prior to the amendment of the rules vide Haryana Government, Notification No.GSR 182/Const./Art.309/Amd(2)/76, dated the 4th August, 1976 even if they had joined the military services before emergency i.e. 26.10.1962. However, the benefit of Military service granted to those Ex-servicemen who joined army before 26.10.1962 and were appointed to State services after the issue of Notification dated 4.8.76 may withdrawn".

Learned counsel for the appellant submitted that the judgment in Dhan Singh’s case required reconsideration because there was discrimination amongst the homogeneous class of servicemen. He also submitted that, by issuing the circular letter dated 7th October, 1991, the State of Haryana was purporting to regulate the discharge of military personnel without taking into consideration the fact that it was necessary to maintain a minimum strength thereof. Our attention was invited to Rules 7, 8 & 9 of the said Rules and it was submitted that, regardless of the curtailment of the definition of military service by the aforestated amendment, some persons remained unaffected thereby, so that there was discrimination.

Rules 6 & 7 of the said Rules relate to the period spent by a Government employee on military service. Rule 8

deals with a temporary Government servant who, after return from military service, is employed in Government service. The appellant was not a Government employee, permanent or temporary, before he was enrolled in military service and we are, therefore, not called upon to determine the effect of Rules 6, 7 and 8. We may, however, point out that each of these rules uses the expression "military service" and that expression in these rules must be construed only as defined by the amendment. The circular letter dated 7th October, 1991, sets out what the combined effect of the cases of K.C. Arora and Dhan Singh is. There is no question of the State attempting to regulate the discharge of military personnel thereby.

The Rules offered benefits to those who joined State Government service after having seen military service during the Emergency. It was open to the State to withdraw the offer, but not qua those who had already accepted the offer and joined the State Government service. Hence was rendered the decision in K.C. Arora's case. The State Government did not withdraw the offer wholly but restricted it to those who had enrolled or were commissioned in the armed forces during the Emergency. The State Government was entitled to do so. In our view, there is a clear and intelligible difference between those who had already chosen the armed forces as a career when the Emergency was declared and those who, in response to the nation's call, joined the armed forces after the Emergency was declared. It was is the country's interest at the critical juncture to make service in the armed forces attractive and compensate those who would otherwise have chosen other vocations. The grant of benefits to the latter class while denying them to the former class is in no way arbitrary or discriminatory.

The Rules did not confer an indefeasible right on all persons who had served in the armed forces during the Emergency. Only those of them who had joined the State Government's service while the unamended Rules operated acquired a vested right, by reason of their having accepted the offer made thereby, which could not be defeated by the amendment.

The appeal and writ petition must, therefore, fail.

We note with regret that we have received no assistance from learned counsel for the State and that his explanation was that he had received no instructions.

The appeal and the writ petition are dismissed. There shall be no order as to costs.