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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7503/2009

% Date of Decision: 23rd of March, 2009

EX. L/NK DHARAM PAL SINGH Petitioner
! Through: Mr. U. Srivastava, Adv.

versus

\$ UOI & ORS Respondent
^ Through: Ms. Monika Garg, Adv.

* **CORAM:**
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE S.L.BHAYANA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: **GITA MITTAL, J. (Oral)**

1. By this writ petition the petitioner assails the order dated 18th May, 2006 whereby he was informed that he was not eligible for pension or re-induction in the Border Security

W.P.(C) 7503/2009

Page 1 of 14

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file and no page is missing.

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Force.

2. The petitioner was enrolled on 22th May 1986 in the BSF and was promoted on 14th June, 1993 to the rank of Lance Naik. The respondents are stated to have issued an order dated 27th December, 1995 informing its members that members of force would be entitled to get pensionary benefits on resignation under Rule 19 of the BSF Rules, provided he had put in the requisite number of years of service and fulfilled all other eligibility conditions. The petitioner is stated to have applied for resignation from his service under Rule 19(1) of BSF Rules, 1969 by a representation dated 1st March, 1997. The respondents issued an order dated 1st April, 1997 informing the petitioner that his resignation stood accepted on approval by the competent authority w.e.f. 31st May, 1997 with all pensionary benefits as admissible under Rules. In terms of the orders, the petitioner was duly discharged from services with retrial benefits.

3. There is no dispute that the petitioner sought release of his pensionary/retrial benefits, which were not granted to him despite representation. Instead the respondents issued an

6

order dated 23rd October, 1998 informing the petitioner that on a careful consideration of the matter, the competent authority had decided that personnel who had resigned under Rule 19 for the period 1996-97 with less than 20 years of service under mistaken impression with pensionary benefits and were not granted pension, were required to be taken back immediately in service. As such by the order dated 21st October, 1998, duly received by the petitioner, he was called upon to refund GPF and other dues paid at the time of resignation. He was also directed to report to the Transit Camp, J & K for further movement on or before 31st October, 1998 for further duties.

4. It is an admitted position that the petitioner failed to refund the amounts which were released to him at the time of his discharge and also failed to join the duties specifically directed.

5. Before us, it is contended by the learned counsel for the petitioner that the petitioner had sought redressal and relief by way of W.P. (C) No. 1026/99 wherein he had made the following prayers:-

7

"a. To quash and setting aside the impugned order vide its No.Estt./124/Rule-19/98/6781 dated 23.10.1998.

b. Directing the respondents to release the pension to the petitioner along with all other consequential benefits in the shape of interest etc."

6. This writ petition was disposed of by an order dated 7th September, 2001. The relevant extract of the order reads as under:-

"The law laid down by the Supreme Court is, therefore, clear and categorical. By virtue of the aforesaid order passed by the Supreme Court, the petitioner, who had resigned from the service before completing the statutory period of service is not entitled to get any pension. In view of the aforesaid order and in the light of the observations and directions made in the aforesaid decision of the Supreme Court in Union of India vs. Rakesh Kumar (supra), the writ petition stands dismissed. The petitioner shall not be entitled to any pensionary benefit. However, it is ordered that if the petitioner has any other dues, which are admissible/payable under the Rules, the petitioner may make a representation to the appropriate authority for the said purpose and if and when the same is filed, the competent authority shall

8

consider the same in accordance with law
and the same, if found due, shall be paid
to the petitioner at the earliest.

There is no prayer in the writ
petition for allowing the petitioner to
rejoin duties. Accordingly, the same
cannot be allowed to be raised herein.
The petitioner may, however, pursue
other relief as is available to him."

7. Despite the observations by this Court in his earlier writ
petition, the petitioner did not approach the respondents by
means of any written communication at all. We find no
averments in this regard in the writ petition. No copy of the
representation or petition or details thereof have been
furnished on record.

8. It appears that the very issue which had been raised by
the petitioner was pending before the Apex Court in several
writ petitions filed by BSF personnel. Finality was received in
this matter by way of the pronouncement of the Apex Court
reported at (2006) 1 SCC 737 'Raj Kumar & Ors. v. UOI & Anr'.

9. The petitioner places reliance on a communication stated
to have been received after the adjudication by the Apex Court.
A letter dated 3rd April, 2006 has been placed by the petitioner

9

on record wherein the Commandant of the 124 Battalion, BSF has written to the petitioner stating that the Apex Court had passed the judgment dated 2nd January, 2006 in W.P.(C) No. 596/2001 Raj Kumar (Supra) to the effect that those effected personnel, who had resigned in the year 1996 and were sanctioned pension under Rule 19 of BSF Rules and further whose pension was stopped pursuant to the judgment dated 30th March, 2001 passed by the Apex Court be recalled to rejoin duties in the respective battalion in BSF immediately. This communication notices that in order to implement the order of the Apex Court, the case had been taken up with the Ministry of Home Affairs to convey formal approval for the proposed action. Pending approval of the competent authority of the Ministry of Home Affairs, the Commandant had required the petitioner to rejoin duties immediately in the unit, failing which it would be presumed that he was no more interested to continue the services.

10. The petitioner submits that in immediate response to this communication he had reported to the respondents on 20th April, 2006 and he was permitted to perform the duties upto

70

26th April, 2006. Thereafter, by letter dated 26th April, 2006, the petitioner was informed that in view of the fact that the case for implementation of court order was still under consideration of the Ministry of Home Affairs, the letter dated 3rd April, 2006 be treated as cancelled.

11. Aggrieved by this communication, the petitioner made a representation to the respondent which was rejected by the letter dated 18th May, 2006. At the same time, the communication dated 26th April, 2006 was followed by a letter dated 18th May, 2006 informing the petitioner that the competent authority had informed that the petitioner was not eligible for pension or re-induction into BSF.

12. This writ petition has been filed aggrieved by the order dated 26th April, 2006 and 18th May, 2006. The petitioner has also contended that his representations sent to the respondents for re-induction in service have not been considered at all by the respondents. Copies of those representations stated to have been sent by the petitioner under post have been enclosed as Annexure P-10 alongwith the writ petition.

13. Ms. Monika Garg learned standing counsel appearing on advance notice has pointed out that the letter dated 3rd April, 2006 issued by the Commandant to the petitioner was clearly based on an incomplete consideration of the pronouncement of the Apex Court in Raj Kumar's case (Supra) and that the petitioner had been informed that the matter was pending consideration with the competent authority. It is submitted that this mistake was corrected by the communication of 26th April, 2006 and 18th May, 2006, which have been assailed before this Court. It is further submitted that adjudication on issues in the matter had terminated in the judgment dated 7th September, 2001 passed by this Court. In any case, the petitioner is dis-entitled to any relief in view of the pronouncement of Apex Court in Raj Kumar (Supra).

14. We have heard learned counsel for the parties and have considered material on record as well as pronouncement of the Apex Court. We find that the petitioner filed Writ Petition (Civil) No. 1026/1999 assailing the order dated 18th May, 2006 and 23rd October, 1998, whereby the petitioner had been called upon to join the service. In this writ petition, the

petitioner clearly expressed his intention of being relieved from the BSF and had sought a further direction to the respondents to release his pension to him with all consequential benefits in the shape of interest, etc. From the prayer made by him in the earlier writ petition, it is sufficiently evident that petitioner had no intention of his resuming his employment with the BSF.

15. It is noteworthy that the petitioner has not been granted any pensionary benefits and his resignation stood accepted on 1st April, 1997. The writ petition filed by him in the year 1999 was disposed of by the order dated 7th September, 2001. So far as the resumption of service is concerned the petitioner had adequate opportunities between 23rd October, 1998 and 7th September, 2001. He did not approach the respondents even once. In the judgment dated 7th September, 2001 passed in Writ Petition Civil No. 1026/1999, this Court has clearly noticed that the petitioner had not made any prayer for rejoining the duties.

16. The petitioner cannot, therefore, be heard to contend that he was prevented by the respondents from resumption of service in any manner. Even after the pronouncement of this

Court in his earlier writ petition, the petitioner has not approached the respondents.

17. Before us a reference is made to a vague averment in the writ petition to the effect that petitioner had made a representation after the judgment dated 7th October, 2001. Reference is in an undated representation annexed with the writ petition wherein also it is vaguely stated that petitioner has approached the concerned officials to release the remaining dues and for re-induction in the services. We find no details of either of the date or of any particulars of the claimed representation.

18. Ms. Garg, learned standing counsel for the respondents, on instructions, has stated that the available record with the respondents also shows that no representation at all has been received at any point of time by the respondents from the petitioner. It now becomes necessary to consider the consequence of the letter dated 3rd April, 2006 issued by the Commandant of the Battalion. A perusal of this communication shows that the same has informed the petitioner that the matter is pending consideration with the

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competent authority in the Ministry of Home Affairs. It is evident from the perusal of the communication that a final view with regard to the entitlement of the petitioner in terms of the judgment of the Apex Court in Raj Kumar (supra) was yet to be taken. Even though the communication required the petitioner to rejoin duties, however, there was nothing in the communication which even remotely suggested that the respondents had formed a final decision that in view of the pronouncement of the Apex Court that the petitioner was entitled to any resumption of service.

19. We had in all fairness put it to the learned counsel for the petitioner to point out as to how the petitioner is covered under the pronouncement of the Apex Court. Learned counsel on both sides place reliance on the observations contained in para 17 of the pronouncement in Raj Kumar (supra), which reads as follows:-

“We find that the cases before us can be divided into the following categories:

- (A) Pre-circular. Personnel who resigned and were granted pension for special reasons, even prior to the circular dated 27.12.1995.
- (B) Post-circular. Personnel who

15

resigned pursuant to the circular dated 27.12.1995. These persons can be further divided into two sub-categories.

- (i) Personnel who retired in 1996, were sanctioned pension and were therefore asked vide letter dated 31.10.1998 not to report for reinduction. Their pension has been stopped pursuant to the judgment in Rakesh Kumar. These persons can be further divided into two sub-categories:
 - (a) those who are in a position to be reinducted into service even now; and
 - (b) those who cannot be reinducted into the service as a result of being age-barred or due to being medically or physically unfit.
- (ii) Those who retired subsequent to 1996, were not sanctioned pension, and were directed to report for reinduction into service or to forfeit pension benefits by virtue of the circular dated 17.10.1998 and the individual letters."

20. Learned standing counsel for UOI has also drawn our attention to para 18(1), the material portion whereof reads as follows:-

"Having considered the peculiar facts arising in each of these groups, we make

the following orders:

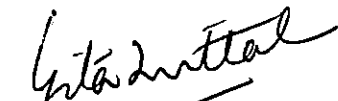
1. The personnel falling in category (B)(ii) i.e. those persons who had retired subsequent to 1996 pursuant to the circular dated 27.10.1995 and had not been sanctioned pension, but who have been directed to report for reinduction in service shall necessarily have to forfeit their pension, if they have not reported for service by virtue of the circular dated 17.10.1998. If, however, they have reported for service then there is no question of any relief in their case."

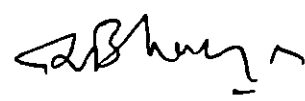
21. It is, therefore, clear that in case any personnel who had retired in 1996 and were not given pension and had been directed reinduction into service or to forfeit pension benefits by virtue of the earlier circular and the individual letters, shall have to forfeit their pension, if they not reported for service by virtue of the circular dated 17.10.1998. If, however, they have reported for service then there would be no question of any relief in their case.

22. The factual narration shows that petitioner had received the individual communication dated 23rd October, 1998 requiring him to join service. The petitioner not only failed to join service, but challenged the same by way of W.P.(C) No.

1026/1999. The petitioner had made a specific prayer seeking grant of pension benefits in terms of the circular dated 27th December, 1995. In this view of the matter, we find no manner of the doubt that the petitioner is squarely covered by the order made by the Apex Court in sub-para (1) of Para 18 of the pronouncement of the Apex Court in Raj Kumar's case (supra).

For this reason, the petitioner cannot be held to be entitled to any relief in the present writ petition. This writ petition is accordingly dismissed.


(GITA MITTAL)
JUDGE


(S.L. BHAYANA)
JUDGE


MARCH 23, 2009
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