

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

% *Judgment Reserved on: December 03, 2009*
Judgment Delivered on: December 07, 2009

+ **W.P.(C) No.3971/2007**

L/N RANJIT SINGH & ORS. Appellants
Through: Mr.Varinder Kumar Sharma, Advocate.

Versus

UOI Respondent
Through: Ms.Anjana Gosain, Advocate with
Ms.S.Fatima, Advocate and
Mr.Yadunath Singh, Dy.Commandant,
BSF.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J.

1. Ten writ petitioners have joined in a common action praying that a mandamus be issued to the respondent to grant/sanction/release/re-start the pension to the petitioners.

2. The petitioners served under BSF for a period in excess of 10 years and submitted resignations on various dates between the years 1969 to 1992. The resignations were accepted.

3. It is averred in the writ petition that some of the writ petitioners were given pension and some were not. The said assertion in the writ petition is without any material particulars inasmuch as it has not been brought out as to which petitioner was sanctioned and released any pension and who was not.

4. As per the counter affidavit filed none of the petitioner was sanctioned any pension for the reason the letter exhibiting the offer of resignation was accepted without any pensionary benefits.

5. The petitioners further plead that on 27.12.1995 a circular was issued as per which members of the Border Security Force (BSF) were permitted to resign with the permission of the Competent Authority even before completing the qualifying service and it was indicated to them that in said eventuality the pension would be released on pro-rata basis under Rule 19(1) of the BSF Rules. Thus, petitioner claim benefit under the said circular dated 27.12.1995.

6. As per the petitioners on 17.10.1998 BSF authorities issued another circular stating that the circular dated 27.12.1995 was issued under a mistaken impression that pension could be released to persons who had not rendered the qualifying service and thus an offer was given to all those who had submitted resignation post 27.12.1995 to rejoin the service and if they do so, they would be treated to be in continuous service and if they do not rejoin, pension would not be paid.

7. Petitioners assert that even they were entitled to similar benefits i.e. BSF was obliged to offer them an option to rejoin if pension was not to be released.

8. The issue raised in the writ petition is squarely covered by a decision dated 4.5.2006 of the Supreme Court in WP(C) No.569/2001 '*Raj Kumar & Ors. vs. UOI & Anr.*'.

9. The Supreme Court was dealing with the circular dated 27.12.1995 and the decision dated 15.1.1998 resulting in a circular dated 17.10.1998 being issued.

10. Briefly noted, the Supreme Court took cognizance of the circular dated 27.12.1995 as per which members of BSF who had not rendered qualifying service could submit offers of voluntary retirement and if accepted it was indicated that pro-rata pension would be paid.

11. In response to the said circular 2209 personnel of the force submitted resignations which were accepted and to 447 personnel of the force pension were released. Case of 1762 personnel of the force were pending sanction when a mistake was realized being that the Rules did not permit release of any pension to any member of the force who had put in less than 20 years of service.

12. Since personnel had acted to their detriment in terms of the circular dated 27.12.1995, the Supreme Court noted that the BSF Authorities issued a circular dated 17.10.1998 in terms of the decision dated 15.1.1998 informing all those who had sought voluntary retirement to join back. They were indicated that if they did not join back no pension would be released to them. It was further conveyed that the period of absence would be treated as earned leave/half-pay leave as due and the remaining period would be treated as leave without pay. It was indicated that length of service and seniority would be retained.

13. Responding to the circular dated 17.10.1998, as noted by the Supreme Court, 1065 personnel reported for work and were taken back in duty. 697 personnel did not join back and qua 697 personnel who did not rejoin, pensionary benefits were stopped. The Supreme Court noted that there were 19

personnel who had resigned prior to the issuance of the circular dated 27.12.1995 qua whom pension was sanctioned before issuance of the circular dated 27.12.1995 and they had less than the qualifying service i.e. 20 years. The authorities did not release pension to them but for 19 personnel various High Courts directed release of pension.

14. It was noted that 3 such cases i.e. all persons who had resigned prior to the issuance of the circular dated 27.12.1995 reached the Supreme Court and vide decision dated 30.3.2001 in Civil Appeal No.6166/1991 'UOI & Ors. vs. Rakesh Kumar & Ors.' it was held that entitlement of pension to BSF personnel did not arise on account of Rule 19 of the BSF Rules but only under the provisions of CCS (Pension) Rules 1972.

15. With reference to the CCS (Pension) Rules 1972 and the provisions of Circular dated 27.12.1995 in para 19, 20 and 21, in its decision dated 30.3.2001 the Supreme Court held:-

“Reading the aforesaid G.O. as a whole, it nowhere reveals Government’s intention to confer any additional pensionary benefit to the members of the BSF who retired before completing the requisite qualifying service as provided under the CCS (Pension) Rules. It neither supplements nor substitutes the statutory rules. The G.O. read with Rule 19 of the BSF Rules would only mean that in case of resignation and its acceptance by the competent authorities, the member of BSF would be entitled to get pensionary benefits if he is otherwise eligible for getting the same under the CCS (Pension) Rules and to that extent Rule

26 which provides for forfeiture of service on resignation would not be applicable.” (*emphasis added*)

“No person can claim any right on the basis of decision which is de hors the statutory rules nor there can be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship.”

“Respondents who were permitted to resign from service under Rule 19 of the BSF Rules before the attainment of the age of retirement or before putting such number of years of service, as may be necessary under the Rules, to be eligible for retirement are not entitled to get any pension under any of the provisions under CCS (Pension) Rules. Rule 49 only prescribes the procedure for calculation and quantification of pension amount. The G.O. dated 27.12.1995 does not confer any additional right of pension on the BSF employees.”

16. Accordingly, in Raj Kumar's case (supra) it was held that with the authoritative pronouncement on the issue by the Supreme Court in Rakesh Kumar's case (supra), the doubts, misgivings and misinterpretation of Rule 19(1) of the BSF Rules were finally cleared. Thus, it was observed that the issue at hand required to be decided in light of the law laid down in Rakesh Kumar's case (supra).

17. With reference to the claim of the writ petitioners in Rakesh Kumar's case (supra), the Supreme Court held that the claims before the Court could be divided into two broad categories i.e. personnel who resigned and were granted pension for special reasons prior to the circular dated

27.12.1995 being issued and the personnel who resigned pursuant to the circular dated 27.12.1995.

18. In respect of the persons who submitted their resignations pursuant to the circular dated 27.12.1995 it was held that even this category could be further sub-divided into two sub-categories. The first sub-category was of personnel who retired post 27.12.1995 and were sanctioned pensions but were not asked to report back for re-induction and whose pensions were stopped pursuant to the decision in Rakesh Kumar's case (supra). The second sub-category was of those retirees post 27.12.1995 who were not sanctioned pension but were directed to report for re-induction in service or to forfeit pension benefit which was held out as payable under the circular dated 27.12.1995.

19. Pertaining to the first sub-category it was observed that even within this category two further sub-divisions could be made. Those who were new to be re-inducted into service when the decision was pronounced and those who had become age barred or due to being medically or physically unfit.

20. The aforesaid is evidenced by the categorization recorded by the Supreme Court in the following words:-

“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 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* letters dated 31.10.1998 not to report for re-induction. Their pension has been stopped pursuant to the judgment in Rakesh Kumar (supra). These persons can be further divided into two sub-categories.

(a) those who are in a position to be re-inducted into service even now.

(b) those who cannot be re-inducted 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 pensions, and were directed to report for re-induction into service or to forfeit pension benefits by virtue of the circular dated 17.10.1998 and the individual letters.”

21. With reference to the peculiar facts arising in each of these groups the Supreme Court directed as follows:-

“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 re-induction 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.

2. In the case of persons falling in category (B)(i), they shall also be given the option of re-induction into service, and those falling in category (B)(i)(a) shall be so re-inducted, subject to the conditions stipulated in circular dated 17.10.1998 and on condition that they shall refund the GPF and pension amounts drawn by them till re-induction. The authorities shall indicate the deadline by which such persons shall offer themselves for re-induction.

3. In the case of persons who shall fall in category (B)(i)(b), i.e. persons who had retired in 1996, were sanctioned pension but who cannot be re-inducted today as they are age-barred or physically or medically unfit or for any other reason including their inability to return the amount of GPF, pension drawn or other dues, there shall be no question of continuing payment of pension which shall be liable to cease as a result of the decision in Rakesh Kumar (supra). We are however of the view that equity demands that in such cases there shall be no recovery of the pension amounts already paid to them.

4. In cases which fall under category (A), i.e. personnel who had resigned prior to the circular dated 27.12.1995 and had been granted pension for special reasons and continued to draw it till the stoppage of pension as a result of the judgment in Rakesh Kumar (supra), we think that irrespective of the position in law, equity demands that, as they have drawn their pension for long periods, they shall not be asked to refund their drawn pension amounts, nor shall their pension be stopped now.”

22. With respect to the directions issued and as afore-noted, it is apparent that the Supreme Court issued the directions on purely equitable considerations and not on account of the law requiring directions to be passed.

23. It is for said reason, while concluding its opinion, their Lordships of the Supreme Court made it clear as under:-

“We have made the aforesaid directions in exercise of our powers under Article 142 of the Constitution in order to do complete justice to a section of the personnel who would otherwise be placed in an inequitable situation for which the authorities are also partly to blame. It is open to this Court to mould the relief by safeguarding the interest of the parties even while declaring the law. The paramount consideration in such cases should be to ensure that there is no injustice caused (see in this connection Deb Narayan Shyam & Ors. vs. State of W.B. & Ors. and State of Bihar & Ors. vs. Kameshwar Prasad Singh & Ors. Barring this limited relief no other relief is due to the petitioners before us. Subject to the aforesaid limited relief all the petitions are dismissed.”

24. The writ petitioners before us are personnel who resigned prior to the circular dated 27.12.1995 being issued. We note that such personnel to whom pensions were granted were placed in category-A by the Supreme Court and for whom direction No.4 is applicable.

25. There was none before the Supreme Court to whom pension was not released. The Supreme Court was considering the case of pre 1995 retirees to whom pension was granted but was later on withdrawn.

26. Thus, it can sufficiently be said that all those to whom no pension was released and had retired pre 1995 would be entitled to no relief.

27. Qua those who retired pre 1995 and pension was released, in law the decision to stop pension is to be treated as legal and binding. This is the finding of the Supreme Court. It is settled law that the power of the Supreme Court under Article 142 of the Constitution of India to do complete justice between the parties is not available to the High Court while exercising power under Article 226 of the Constitution of India.

28. Thus, we express our inability to grant any relief to the petitioner at par with the relief which was granted by the Supreme Court for the reason the Supreme Court did not grant relief finding legal right in favour of the petitioners before the Supreme Court. Relief was granted by the Supreme Court in exercise of its power to do complete justice vested in the Supreme Court under Article 142 of the Constitution of India.

29. It may be said that our present decision is a passport to the petitioners to beseech their Lordships of the Supreme Court to do complete justice to them in exercise of the power vested in their Lordships of the Supreme Court under Article 142 of the Constitution of India.

30. The writ petition is dismissed.

31. Noting the age of the petitioners and the fact that that they are without any monetary supply we refrain from imposing any cost.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

December 07, 2009
Dharmender