

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

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W.P.(C) No.545/2005

Reserved on: 1st October, 2010

Date of pronouncement: 8th October, 2010

EX.S.I. D.M. RAI Petitioner
Through Mr. Ajay Veer Singh Jain, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through Mr. B.V. Niren, Adv. and Mr. Abhishek Goyal,
Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

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

GITA MITTAL, J

1. A short point relating to the legality and validity of the action of the respondents in forfeiting the pension of the petitioner in exercise of discretion under Rule 24 of the Central Civil Service (Pension) Rules, 1972 (hereinafter referred to as 'CCS (Pension) Rules' for brevity) on account of dismissal from service with the Border Security Force (hereinafter referred to as "BSF" for brevity) pursuant to disciplinary proceedings, arises for consideration in the present case.

2. The petitioner was appointed as a sub-inspector in the BSF and posted with the 162 Battalion of the BSF. A disciplinary case was initiated against the petitioner on allegations of inaction and act of cowardice when faced with ambush by the insurgents at about 0930 hrs on 31st December, 1992 in area approximately seven kilometers from BOP D.P. PARA while leading BSF party

from D.P. Para to Adm Base Gandachera which resulted death of three BSF personnel namely Const. Sanjoy Roy, Const. Sam Sullah Haque Mullah and Constable Mohan Lal Sonar and loss of three weapons 7.62 MM S.L.R. with 150 rounds 7.62 BDR Amn. of 162 Bn BSF.

3. A trial by General Security Force Court was conducted against the petitioner held between 15th March, 1996 and 29th March, 1996 on the following three charges:-

"First Charge BSF ACT
Sec 14(c)

In the presence of enemy misbehaving in such a manner as to show cowardice. In that he, at Hathinallah on 31 Dec 92 being incharge of patrol party misbehaved in the presence of armed militants, who had shot dead two members of his party namely, No.90153042 CT S M. Mulla, and No.88398261 CT Sanjay Roy and critically injured No.92402035 CT Mohan Lal by leaving the ambush area instead of facing them.

Second Charge BSF ACT
Sec 22(e)

Neglecting to obey a General Order

In that he, at D.P. Para BOP on 31 Dec 92 as post comdr did not carry his personal weapon and ammunition while moving out on patrol duty, thereby neglecting to obey order No.IGA/DPS/1196/116-33 (TC & M FTR) dated 22-10-90.

Third Charge BSF ACT
Sec 40

An omission prejudicial to good order and discipline of the force in that he, at Hathinallah on 31 Dec 1992 at about 0930 hrs while being post comdr and incharge of the patrol party are having been ambushed, improperly omitted to report about the matter to his superior officers till 1915 hrs on 31 Dec 92."

4. The General Security Force Court found the petitioner guilty of charges by its order dated 8th of July, 1997 and dismissed him from service. The proceedings of the court were confirmed by the Inspector General, BSF TC & M Frontier on 3rd July, 1997 and the petitioner was accordingly struck off

the strength of 162 Battalion of BSF w.e.f. 3rd July, 1997 (AN).

5. Upon his dismissal from service, the petitioner addressed a letter dated 18th August, 1997 seeking grant of pensionary benefits. However, he was informed by a communication dated 28th August, 1997 to the effect that he was not entitled to pensionary benefits as he was dismissed from service by the General Security Force Court. Aggrieved thereby, the petitioner has filed the present writ petition.

6. Mr. Ajay Veer Singh Jain, learned counsel for the petitioner has submitted that the punishments which may be imposed by the Security Force Court are detailed under Section 48 of the BSF Act, 1968 and that the same does not provide for forfeiture of pension as a punishment. It is further contended that the General Security Force Court not having imposed any such punishment upon the petitioner, it was not open to the respondents to additionally punish the petitioner by forfeiting his pension.

7. Learned counsel has further contended that discretion to forfeit the pension of BSF personnel is legally permissible only under Rule 20 (5) of the Border Security Force Rules, 1969 ('BSF Rules, 1969' hereafter). The submission is that such power is vested in the Central Government and action in this regard can be taken only in case disciplinary action under Section 10 of the BSF Rules on account of misconduct is envisaged against the person. It is further submitted that such action is legally permissible under the provisions of the BSF Rules, 1969 only after giving an opportunity of showing cause against the proposed action to the person concerned. In the instant case, the respondents have not taken any administrative or disciplinary action against the petitioner on any allegation of misconduct and that the forfeiture of his pension without an opportunity to show cause by the Central Government is without jurisdiction and illegal. Learned counsel for the

petitioner has placed reliance on the pronouncement of the Supreme Court reported at ***Union of India & Ors. Vs. Rakesh Kumar*** and the decision dated 4th January, 2006 in WP (C) No.569/2001 entitled ***Raj Kumar & Ors. Vs. Union of India & Anr.*** Our attention is also drawn to the pronouncement of the Supreme Court reported at ***(2002) 1 SCC 405 Union of India Vs. P.D. Yadav*** to contend that before making an order of forfeiture of pension, the respondents were bound to issue a notice to show cause to the petitioner and proceed after consideration of the petitioner's reply.

8. We have heard learned counsel for the parties. Examination of the pronouncement of the Supreme Court in ***Raj Kumar & Ors. Vs. Union of India (supra)*** and ***Union of India & Ors. Vs. Rakesh Kumar (supra)*** would show that the issue raised before the Supreme Court related to interpretation of Rule 19 of the BSF Rules and permissibility of resignation from service with this force. The court was required to consider the provisions under which pension to BSF personnel is granted. In this behalf, after a detailed analysis of the provisions of the BSF Act & BSF Rules, the Supreme Court had concluded that entitlement to pension of BSF personnel did not arise on account of Rule 19 of the BSF Rules but only under the provisions of the Central Civil Service (Pension) Rules, 1972 ('CCS (Pension) Rules 1972 hereafter. Therefore, the question which has been urged by learned counsel for the petitioner has to be examined as against the provisions of the CCS (Pension) Rules, 1972.

9. For the purposes of impact of dismissal from service of a serving personnel upon his pension, it becomes necessary to consider Rule 24 of the CCS (Pension) Rules, 1972 which reads as follows:-

"24. Forfeiture of service on dismissal or removal

Dismissal or removal of a Government servant from a

service or post entails forfeiture of his past service.”

10. It is also noteworthy that pension is admissible under Rule 48 of the CCS (Pension) Rules, 1978 which reads as follows:-

“48(1) At any time after a Government servant *has completed thirty years’ qualifying service-*

(a) He may retire from service, or

(b) He may be required by the Appointing authority to retire in the public interest

And in the case of such retirement the government servant shall be entitled to a retiring pension:

Provided that-

(a) A Government servant shall give a notice in writing to the appointing Authority at least three months before the date on which he wishes to retire; and

(b) The Appointing Authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months’ pay and allowances in lieu of such notice:

Provided further that where the Government servant giving notice under Clause (a) of the preceding proviso is under suspension, it shall be open to the Appointing Authority to withhold permission to such Government servant to retire under this rule:

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xxx”

11. Learned counsel appearing for the respondent has pointed out that the expression ‘entails’ appearing in Rule 24 noted above is not defined under any of the applicable rules and consequently, has to be construed having regard to its ordinary meaning. Our attention has been drawn to ‘Concise Law Dictionary’ by P. Ramanatha Aiyar which gives the following meaning of this expression:-

“Entail :-

To involve; to make necessary.”

12. As a consequence of Rule 24 of CCS Pension Rules, forfeiture of service follows ipso facto upon the dismissal from service. It is, therefore, clearly evident that the respondents have no discretion at all on the aspect of

forfeiture of past service. So far as the incidence of pension is concerned, rule 48 of the CCS (Pension) Rules provides that it is only after the Government servant retires from service after 30 years of qualifying service that he would be entitled to pension. Upon forfeiture of past service in terms of Rule 24 of the CCS (Pension) Rules, it is evident that there would be no pensionable service which could entitle a person to pension in terms of Rule 48 of the CCS Pension Rules.

13. We also find that so far as Rule 20 (5) of the BSF Rules, 1951 which has been relied upon by learned counsel for the petitioner, is concerned, the same relates to administrative action, if envisaged, against a BSF personnel. In the instant case, no such action was contemplated by the Central Government nor was taken against the petitioner. The reliance therefore on the provisions of Rule 20(5) is clearly misconceived and devoid of legal merit. As noticed above, the denial of pension to the petitioner results as a direct consequence of forfeiture of his service in terms of Rule 24 of the CCS (Pension) Rules which would have the inevitable consequence of their being no pensionable service.

14. At this stage, we may notice the pronouncement of the Apex Court reported at ***Union of India & Anr. Vs. P.D. Yadav (supra)*** relied upon by the petitioner. This was a case arising out of exercise of discretion under Regulation 16(a) of the Pension Regulations for Army, 1961 which provides that in case an army officer who has to his credit the minimum period of qualifying service required for pension, is cashiered or dismissed or removed from service, his pension may at the discretion of the President be either forfeited or be granted at a rate not exceeding that for which he/she would have otherwise qualified had he/she retires on the same date. The court also considered the similar provision in Regulation 15 of the Navy (Pension)

Regulations, 1964 contained which provides that no pension shall be granted to an officer who is dismissed with disgrace from service. Regulation 15(1) of the Navy Pension Regulation states that no pension shall be granted to an officer who is dismissed with disgrace from service. However, regulation 15(2) of the Navy Pension Regulation says that the case of an officer who is dismissed otherwise than with disgrace from the service, the question whether any pension shall be granted and, if so, the rate of such pension shall be decided by the Central Government provided that the pension, if granted, shall not exceed the rate which would even admissible to him if he had retired on the same date.

15. The above narration shows that so far as the pension regulations for Army personnel are concerned, upon an officer being cashiered, dismissed or removed with disgrace from service and upon dismissal with disgrace from service of a navy personnel, discretion is conferred on the authorities concerned to either forfeit the pension or permit the same. Discretion is conferred also on the authorities with regard to the rate at which person is to be granted pension. It is in this background that the court had held that the person concerned would be entitled to an appropriate notice to show cause.

16. In the instant case, the above extracted applicable rules show that there is no discretion at all upon the imposition of penalty of dismissal from service upon a person facing disciplinary proceedings.

17. Mr. Abhishek Goyal, learned counsel appearing for the respondents has also placed a judgment of the Supreme Court dated 4th March, 2003 rendered in Civil Appeal No.5124/2001 titled as ***State of Haryana vs. Balwant Singh*** contending that the order of forfeiture of service consequent upon the punishment of dismissal does not tantamount to the petitioner suffering double jeopardy. No issue is raised before us with regard to the

legality or validity of the petitioner's conviction order dated 8th July, 1997 and the sentence of dismissal from service imposed upon him consequently.

18. In view of the above discussion, it has to be held that the CCS (Pension) Rules noted above permit no discretion to the respondents so far as issue of grant of pension to the petitioner was concerned. In view of the above, the prayer of the petitioner for grant of pensionary benefit by way of the present writ petition is clearly misconceived.

We find no merit in this writ petition which is hereby dismissed.

GITA MITTAL, J

J.R. MIDHA, J

October 8, 2010

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