

LANCE NAIK BANWARI LAL Petitioner
Through : Major K. Ramesh with
Ms. R. Archana, Adv.

versus

UOI AND ORS Respondents
Through : Mr. M.S. Oberoi, Adv. with
Asstt. Comdt. Bhupinder
Sharma, BSF.

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? | 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. There is no dispute to the material facts giving rise to the present writ petition. The petitioner was enrolled on 14th July, 1985 as a Constable with the Border Security Force ('BSF' hereafter) and stood promoted to the rank of a Lance Naik.

2. It is also undisputed that on interpretation of Rule 19 of the BSF Rules, 1969, the BSF had taken a view that pro rata pension was admissible to personnel who sought retirement. In this regard, certain Circulars including the Circular dated 27th September, 1995 are stated to have been issued by the BSF.

3. Catalyzed by this view of the BSF, the petitioner had submitted a first resignation letter dated 31st March, 1996. We may note that scores of other BSF personnel had also resigned from the BSF induced by the same interpretation of Rule 19 of the BSF Rules, 1969 by the respondents.

4. Unfortunately shortly after his resignation, the petitioner was involved in an accident on 14th April, 1996 resulting in amputation of his both legs.

5. So far as the correct interpretation of Rule 19 of the BSF Rules is concerned, the issue was pending for consideration before the Supreme Court. A judgment dated 30th March, 2001 reported at **(2001) 4 SCC 309** titled **Union of India and Others vs. Rakesh Kumar** as well as connected appeals was pronounced by the Supreme Court. It was specifically held that no pro rata pension was admissible to the personnel and that members of the BSF had to complete minimum length of qualifying service in order to be eligible for retirement and benefits under Rule 19 of the BSF Rules, 1969. The court had specifically held that the BSF personnel who were permitted to resign from service under Rule 19 of the BSF Rules before attaining the age of retirement or before putting such number of years in 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 the Central Civil Services (Pension) Rules.

6. It appears that after having permitted some personnel to resign and having granted pro rata pension, the BSF had also realized its mistake and had taken rectification action by issuance of the communication dated 15th January, 1998 to some of its employees which reads as follows:-

“Office of the Commandant : 151 Battalion,
BSF, Raninagar, PO/Dist. Jalapaiguri

L.No.24/1/97-Pers/BSF Dated 15.01.1998

To
Ex-LNK Charan Singh
Vill. Rohana, PO Rohana
District Rohtak (Haryana)

Sub: Resignation under Rule-19

It is to inform you that DG BSF after careful consideration has now decided that all personnel who resigned under Rule 19 during 1996, 1997, 1998 with less than 20 years service under mistaken impression with pensionary benefits and not granted pension, to be taken back immediately.

2. The amount of GPF and other dues paid to you are required to be refunded.

3. You are directed to report to this HQ forthwith to continue in service.

4. This matter may be treated as urged.

Sd/- for Commandant
151 BN BSF”

7. This Circular was followed by a circular dated 17th October, 1998 to such BSF personnel who had not yet been granted pension to also rejoin.

8. Writ petitions were also filed before the Supreme Court by some persons who had failed to avail opportunity of returning to service. In these writ petitions, the adjudication culminated

in the judgment dated 4th January, 2006 reported at **(2006) 1 SCC 737** titled **Raj Kumar and Others vs. Union of India and Another**. After detailed consideration, directions were given by the Supreme Court in paras 17 and 18 of the pronouncement, the relevant portion whereof reads as follows:-

“17. 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 pension, and were directed to report for re-induction in to service or to forfeit pension benefits by virtue of the circular dated 17.10.1998 and the individual letters.

18. Having considered the peculiar facts arising in each of these groups, we made the following orders:

XXXXX

(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.”

(Emphasis supplied)

9. So far as the present petitioner is concerned, in view of the adjudication by the Supreme Court in the case of **Raj Kumar** (supra), he had reported to the Group Centre on 4th January, 2006 for being medically examined. The case of the petitioner for re-induction into the service was rejected for the reason that he had suffered amputation of both legs on 14th April, 1996.

10. By way of the present writ petition, the petitioner has urged that but for the wrong interpretation of the applicable rules by the BSF Authorities and Circulars issued by them, the petitioner would not have resigned from service or opted for pension. Circulars issued by the respondents dated 27th December, 1995, 17th October, 1998 and 24th February, 2006 lend some light on the manner in which the respondents were working the rights and placement of the BSF personnel. The **Circular** dated **27th December, 1995** reads as follows:-

“No.24/1/95-Pers/BSF
Government of India
Ministry of Home Affairs

Directorate General Border Security Force
(Personnel Directorate).

Block No.10, 5th Floor
Kendria Karyala Pariser
Lodhi Road, New Delhi-03.

Dated the 27th Dec., 1995.

All Frontier HW BSF
All SHQ including DIG (HQ) New Delhi.
All Trg. Institutions
TSU/CAnwosto/CSMT/Signal Regt./
HQ Arty /STN/SRO
All Base BSF
All Arty Regts BSF

SUB: Grant of pensionary benefits on
Resignation under Rule 19 of the BSF Rules,
1969.

Attention is invited to this HQ letter
No.F-35036/3/78-Staff/BSF dated 04th Nov.,
1981 conveying the decision of the Ministry
of Home Affairs in the matter of admissibility
of Pensionary Benefits on acceptance of
resignation under Rule 19 of the BSF Rules,
1969.

2. In this connection the undersigned is
directed to inform that the matter was again
referred to the Government to review their
decision in order to given pensionary
benefits to members of the BSF on tendering
resignation under rule 19 of the BSF Rules,
1969. The Ministry of Home Affairs in
consultation with the Department of Pension
and pensioners Welfare has agreed to our
proposal and decided not to amend rule 19
of the BSF Personnel 1969, till such time
separate Pension Rules for the BSF Personnel
are framed. The Government has also
agreed to our views that a member of the
force is entitled to get pensionary benefits
on resignation under rule 19 of the said
Rules provided he has put in requisite
number of years of service and fulfills all
other eligibility conditions.

3. A number of Ex-BSF personnel have
filed petitions in various courts of law
claiming for the grant of pension on their
resignation from service under the provisions

of Rule 19 of the BSF Rules, 1969. Besides this a number of notices under section 80 CPC are also being received in this regard.

4. Rule 19(1) of the BSF Rules, 1969 provides that the competent authority may, having regard to special circumstances of a case, permit a member of the force to resign from the force before attainment of the age of retirement or before putting in such number of years of service as may be necessary under the rules to be eligible for retirement. The authority competent to grant such permission is also empowered to make such reductions in the pension or other retirement benefits of a member of the force, if so eligible, as it may consider just and proper in the circumstances of the case.

5. In view of the provisions contained in rule 19 of the BSF Rules, 1989 as mentioned in para 4 of the above and based on the approval of the MHA as per para 2 above, in future the authorities who accept the resignation of a member of the Force shall specify in the order, the reduction to be made in the pension, if any, as per the provisions contained in proviso (ii) to Rule 19(1) of the BSF Rules, 1969. In case no such reduction is specified in the order regarding acceptance of resignation, it would imply that no reduction in the pension has been made.

6. In order to decide all pending cases including the case which are presently under adjudication, it is incumbent on all authorities to undertake a thorough review of all pending cases. For this purpose, cases of resignation accepted in respect of members of the Force, who have not been allowed pensionary benefits will be reviewed and pass necessary orders within the shortest possible time limit. In this regard Frontier IsG and Heads of Trg Institutions will ensure that these instructions have been complied with by the Units/Establishments under their Administrative Control.

(B.N. chaturvedi)
Deputy Director (Pres)."

11. The ***Circular dated 17th of October, 1998*** reads as follows:-

“No.13/19/1/98-Rectt/BSF/1367-1667
Government of India
Ministry of Home Affairs
Dte General Border Security Force
(Pers Dte : Rectt Section)
New Delhi – 3.

Dated 17th October, 1998

To
All Ftr HQrs BSF
All Sector HQrs BSF
BSF Academy, Tekanpur
BSF CSWT, Indore
TC&S Hazri bagh
All BSF Bn:/ All STCs/CTSS/STC I & STC II.

Sub:- RESIGNATION UNDER BSF RULE 19 :
RE-INSTATEMENT THEREOF.

In continuation of this Dte's letters 24/I/97-Pers/BSF dated 17th Jan 98, 21/1/97-Pers/BSF dated 23 March 98 and Signal No.R-3408 dated 12 Oct 98, the following procedure may be adopted while considering the case on the subject cited:-

- (a) In exercise of the ***powers conferred under Rule 28-A*** read with Rule 6 of BSF Rules 1969, the ***Director General directs that all personnel who have resigned after the circular of 27 Dec 1995 with less than 20 years of service under the mistaken impression that pension was due to them may be taken back in service treating their period of absence as an Earned Leave/Half Pay Leave as due and treating the remaining period as leave without pay (EOL) as a special case.*** The personnel will have to refund GPF and other dues paid to them. ***They will retain their***

seniority. Commandant will have a special police verification carried out about their period of absence.

- (b) A Registered/AD letter be sent to all personnel whose resignation was accepted after circular of December, 1995 with pensionary benefits but were not granted pension to join back the duties in the Force immediately. They will retain their seniority on re-instatement in service and the period of absence will be treated as Earned Leave/Half Pay Leave as due and leave without pay (EOL) for the remaining period of absence as a special case subject to police verification of their period of absence. It should also be made clear that if a member of the Force is not interested to re-join, he will not be entitled to any pension. However, this will be subject to order of the Hon'ble Court in any case pending before it.
- (c) It has been All communication should be issued to affected personnel accordingly. The progress on the subject be intimated to this HQ for record.

A list of cases available in this Dte is enclosed.

(K.K. Dhardwaj)
DY DIRECTOR (PERS)"
(Emphasis Supplied)

12. The above **Circular** was followed by a Circular dated **24th of February, 2006** which read as hereafter:-

"No.13/19/1/98-Rectt/BSF/1367-1667
Government of India
Ministry of Home Affairs
Dte General Border Security Force
(Pers Dte : Rectt Section)

Block No.10, 5th Floor,
CGO Complex, Lodhi Rod,
New Delhi – 110003

Dated, the 24th Feb., 2006.

To

HQrs Addl DG (East/West)
All Ftr HQrs BSF
All Trg Instns

Subject:- **IMPLEMENTATION OF
JUDGMENT DATED 04 JAN
2006 PASSED BY HON'BLE
SUPREME COURT IN
WP(C)NO.569 OF 2001 FILED
BY EX-LNK RAJ KUMAR AND
ORS VS UOI AND OTHERS -BSF
RULES-19.**

Reference this HQ (D&L Branch) letter No.2/SLP-2005/D7L/BSF/530-55 dated 19/20 Jan'2006 and this Dte Signal No.R/3402 dated 13/02/2006.

2. I am to inform that a case has been taken up with MHA to convey formal approval to implement the above order of Hon'ble Supreme Court. The decision is likely to be received soon. Action may be taken by respective pension sanctioning authorities for implementation of judgment dated 04/01/2006 passed by Hon'ble Supreme Court. However the implementation will only be after clearance of MHA is received and conveyed to all concerned. The required action is :-

- a) All effected personnel who resigned in the year 1996, were sanctioned pension and further their pension was stopped pursuant to the Judgment dated 30/03/2001 passed by the Hon'ble Supreme Court be recalled through Registered/AD letters to rejoin immediately.
- b) Those who report for rejoining their medical examination as per instructions and special police verification (character and antecedents) of absence period be got carried out through

concerned police authorities in an expeditious manner.

3. Following conditions of re-joining be also mentioned in letters as per Hon'ble Supreme Court order:-

- a) The shall refund GPF and Pension amounts drawn by them till re-induction.
- b) They will be re-inducted in service subject to medical fitness as per instructions and verification of character and antecedents for the absence period from concerned police authorities.

4. The cut off date of rejoining by such personnel to their respective units/HQrs for re-induction will be intimated after approval of competent authority.

(JAGIR SINGH SRAN)
ADDL DIG (ESTT)
24 Feb'2006"

13. The above Circulars would show that the respondents have decided that upon reinstatement of the employees, so far as the period between their resignation and their re-induction into service was concerned, the respondents have regularized the same against the leave which was admissible to them. The respondents have also decided that such employees would retain their seniority on re-induction.

14. Mr. K. Ramesh, learned counsel for the petitioner has contended that in case the petitioner had not resigned from service and had suffered the accident while he had been in service on 14th April, 1996, the disability which he had suffered would then have been held to be attributable to his service. He would then have been entitled to several financial benefits.

In this background, the petitioner has prayed before this court for grant of pay and allowances for the period between 1996 when he was induced to retire till 2006 when called upon to rejoin as well as all benefits thereafter.

15. A grievance is made by the petitioner that in view of the wrong interpretation of the rule by the respondents and his having been induced to resign from service, grave injustice has resulted to the petitioner. The submission is that for this reason the petitioner entitled to the financial benefits. Learned counsel for the petitioner has pointed out that such facts were never placed before the Supreme Court at the time of consideration in **Union of India and Others vs. Rakesh Kumar** and **Raj Kumar and Others vs. Union of India and Another** (Supra).

16. The respondents contend that in view of the directions made by the Supreme Court in para 18 of the judgment in **Raj Kumar and Others vs. Union of India and Another** (supra), the present writ petition is not tenable. The relief sought by the petitioner could at best be considered by way of appropriate remedy before the Supreme Court. The respondents dispute entitlement of the petitioners to any relief.

17. It is noteworthy that in case the respondents had not interpreted Rule 19 wrongly, the petitioner would not have resigned and would have still been in service. Further if the accident would not have intervened and the petitioner would not have suffered the amputations, the petitioner would have

been found medically fit. In terms of the above Circulars, the period while he was out of service would have been regularized towards the leave which was available to the petitioner. It is not disputed that in case the petitioner had been involved in the accident and suffered amputation while on earned leave, the same would have been treated to be attributable to his service and several benefits would have enured to the petitioner.

18. The respondents have thus regularized the period between the resignation and re-induction deeming and treating such similarly placed personnel as if in continuous service. The petitioner is seeking parity. It is pointed out that such contingency has not been placed before the Supreme Court in the aforenoticed pronouncements in **Union of India & Others vs. Rakesh Kumar** and **Raj Kumar vs. Union of India & Others** (supra)

19. However, in view of para 18 of the judgment in **Raj Kumar and Others vs. Union of India and Another** (supra), learned counsel for the petitioner has prayed that he may be permitted to withdraw the present writ petition with liberty to seek the reliefs which have been sought before this court by way of appropriate remedy.

19. This writ petition is accordingly dismissed as withdrawn with liberty as prayed for.

Dasti.

GITA MITTAL, J

J.R. MIDHA, J

DECEMBER 23, 2010
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