

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 23895 of 2011 (O&M)

Date of decision : April 27, 2015

Gulzar Singh,

..... Petitioner

v.

Principal Secretary, Ministry of Home Affairs, New Delhi and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Mukesh Bhatnagar, Advocate
for the petitioner.

Mr. Agam Jund Mullanpur, Advocate
for the respondents.

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

Reply on behalf of respondents No.1 to 3 filed. Copy supplied.

The petitioner has sought the grant of pension. He had joined the Punjab Armed Police on 18.4.1962. His formation was merged with the BSF in the year 1966. In the year 1975, he was permitted to resign from service after he completed more than 13 years of service. On 27.10.1995, the respondents issued a circular (Annexure P-3), wherein it is stated that a member of the Force is entitled to get pensionary benefits provided he puts in such number of years of service as may be necessary under the rules to be eligible for retirement, and fulfills all eligibility conditions. The present

petition has been filed claiming pensionary benefits under the said circular.

This matter is not res integra. In Raj Kumar v. Union of India, 2006(1) SCC 737, the Hon'ble Supreme Court held as follows :-

“ 7. Some of the personnel who had been permitted to resign under Rule 19 of the BSF Rules prior to the circular dated 27.12.1995, who did not have the qualifying service for pension, sought pensionary benefits by placing reliance on the circular dated 27.12.1995. As the authorities did not concede their right, they moved the High Court for relief. Three such cases came up to this Court and were decided by this Court in its judgment in Union of India and Ors. v. Rakesh Kumar and Ors., in Civil Appeal No. 6166/1999 along with Civil Appeal Nos. 2121/2000 and 2491-92/2001 decided on 30.3.2001 reported in (2001) 4 SCC 309. The controversy with regard to the entitlement to pension of BSF personnel resigning under Rule 19 of the BSF Rules before completion of the minimum length of qualifying service for eligibility for grant of pensionary benefits, was finally decided and put to rest. This Court held that entitlement to pension to BSF personnel did not arise on account of Rule 19 of the BSF Rules, but only under the provisions of the Central Civil Services (Pension) Rules, 1972. After a detailed analysis of the provisions of the BSF Act and the BSF Rules, the relevant provisions of the CCS (Pension) Rules, 1972 and the provisions of the G.O./Circular dated 27.12.1995 this Court held, (vide Paragraph 19) thus:

'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).'

Further, this Court observed, vide Paragraphs 20 and 21,

thus:

'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.'

Thus, with this authority of the Court, the doubts, misgivings and misinterpretation of Rule 19(1) of the BSF Rules were finally cleared. It is in the light of the law laid down by this Court in Rakesh Kumar (supra) that we will have to decide if the writ petitioners before us are entitled to any relief.”

13. 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 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.

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 and Ors. v. State of W.B. and Ors* (2005)2 SCC 286, and *State of Bihar and Ors. v. Kameshwar Prasad Singh and Others* (2000)9 SCC 94. 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.”

It is not disputed that the entitlement for pension under the BSF is 20 years service. In view of the exposition of law made above, the petitioner would not be entitled to any relief. Consequently, this writ petition is dismissed.

(AJAY TEWARI)
JUDGE

April 27, 2015
`kk'

