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

% **Decided on : 23.12.2015**

+ **W.P.(C) 1259/2001**

BHOPAL KANJILAL

..... Petitioner

Through: Mr.Abhinav Singh, Mr.Vinod Goyal
and Mr.Siddharth Nayak, Advocates

versus

U O I

..... Respondent

Through: Ms.Barkha Babbar and Ms.Dipanjali
Tyagi, Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

C.M.Nos.28975/2015 (for condonation of delay)

For the reasons mentioned in the application, the delay in filing the application for restoration of the writ petition is condoned.

Application stands disposed of.

C.M.Nos.28974/2015 (for restoration)

The application is allowed.

The writ petition is restored to its original number.

W.P.(C) 1259/2001

1. With the consent of the counsels of the parties, the writ petition is heard finally.
2. The petitioner had joined the Border Security Force (BSF) on 23.08.1986. He was transferred to 74th Battalion at Dera Baba Nanak,

Punjab on 23.01.1996. He appears to have suffered some personal problems on account of which he tendered his resignation from the BSF on 08.11.1996. At that point of time in the BSF, the prevailing understanding was that those who completed 10 years of service, were eligible for pension; this was based upon a circular dated 27.12.1995. The petitioner's initial application for resignation was rejected since it was not in accordance with their rules on 13.11.1996. He subsequently lodged another resignation letter on 30.03.1997 which was accepted and he was relieved from duties.

3. There appears to have been some rethinking by BSF authorities on account of litigations in various High Courts and also internal enquiry as a consequence of which it was decided on 15.01.1998 to recall all those personnel whose resignations were accepted under the mistaken belief that they were entitled to pension after completion of 10 years service. A general circular/letter was issued on 15.01.1998. This was followed up by another letter and a specific letter was addressed to the petitioner on 17.10.1998. In these circumstances, the petitioner reported for duties and was allowed to rejoin them on 09.12.1998.

4. The petitioner thereafter again wrote to the respondents that he wished to resign from services on account of specific personal reasons. The letter of resignation in this regard reads as follows:

*“To
The Commandant,
74 BN BSF,
C/O SO APO*

Sub.: APPLICATION FOR DISCHARGE FROM SERVICE

Sir,

It is submitted that I, No.867991358 Const.Gopal Kanjilal, am serving in 'K' Coy 74 Bn BSF. My request is that:-

While I was serving in 107 BN, BSF, I had got a serious injury in left hand, during the duty. After that injury, I was awarded medical category 'E'. ___[illegible] I could not be promoted. Therefore, on 03.11.1996, I asked for resignation with pension under Rule 19 (a) and the same was accepted wef. 30.06.1997 but due to non granting of pension, I was recalled after 18 months and thus I rejoined on duty on 08.12.1998. Since then I am performing my duties, but I feel unable, while proceeding on duty in hilly area with bedding and weapon due to hand injury. It is therefore requested that I may be discharged immediately from service w.e.f. 22.07.1999. I shall be grateful to you.

Your's faithfully

Dated 21.07.1999

No.867991358

Rank: Constable

Name: Gopal Kanjilal

Coy: E

74 BN BSF

5. The resignation was accepted on 21.07.1999 and the petitioner was relieved from duties. He has approached this court claiming reinstatement by these proceedings. The petitioner urges – in support

of the claim that the acceptance of resignation cannot be termed as exercise of voluntary choice on account of the mental pressure he was undergoing and that having regard to the prevailing confusion with respect to the entitlement to pension in the subsequent judgments of the Supreme Court, his claim for reinstatement has to be granted.

6. The petitioner also urges that the force of circumstances which compelled him to apply for resignation the second time were inter alia, the service conditions i.e. he was transferred and his requests and representations were not allowed whenever he sought accommodation. In despair, he was constrained to apply for resignation. It is stated that in the light of the judgment of Supreme Court, the BSF is under a duty to take him back into the services. Particularly, counsel relies upon the judgment of the Supreme Court in *UOI & Ors. vs. Rakesh Kumar* (2001) 4 SCC 309.

7. The respondents submit that if there were doubts as to the entitlement of the petitioner to pension, they were dispelled with the public notice issued on 15.01.1998 offering to reinstate all those who resigned from service under the mistaken belief that they were entitled to pension. The petitioner was also issued a separate letter on 17.10.1998; he responded and was reinstated on 09.12.1998. In these circumstances, when he applied afresh for resignation – which was accepted, the reason for his move was entirely different i.e. his inability to work as BSF personnel on account of sickness and infirmity and reluctance to serving in remote hilly station. It was submitted in addition, that the judgment of *Rakesh Kumar* (supra) clearly establishes that the order dated 27.12.1995, based upon which

some personnel had sought resignation, could not and did not confer any additional right for pension. Learned counsel also relied upon subsequent judgment of the Supreme Court in ***Raj Kumar & Ors. vs. Union of India and Anr.***(2006) 1 SCC 737 which had outlined several eventualities and clearly spelt out which category amongst the personnel who resigned were entitled to re-induction.

8. The above factual discussion would show initially that the petitioner had resigned perhaps on a bonafide belief that he was entitled to receive pension. That was a time when the 27.12.1995 circular was in existence. However, on 15.01.1998 a general notice was issued by the BSF inviting all those who had resigned under such mistaken belief to report for duties. The petitioner was also issued a specific notice on 17.10.1998; he reported and was re-inducted to his post on 09.12.1998. He thereafter served the BSF for over 7 months and on 21.07.1999 submitted a second letter of resignation – this time not on the mistaken belief that he was entitled to pension but for more personal reasons i.e. illness on account of some injuries etc. and his reluctance to serve in the BSF because he was likely to be posted in hilly areas.

9. The decision in ***Raj Kumar*** (*supra*), which was rendered after ***Rakesh Kumar*** (*supra*), categorised all personnel who had exercised the so called option to resign for pension and after discussing their rights, held 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; 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 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 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.

10. The facts of the present case would reveal that the petitioner clearly falls in category 17 (B) (ii) which in para 18 (1) have been held not to be entitled to any further benefit. The petitioner did report for duties by virtue of the circular dated 07.10.1998. He did serve in the BSF thereafter. Subsequently, on 21.07.199 for entirely independent and separate reasons he sought and was allowed to resign from the BSF. In these circumstances, he is not entitled to any relief much less a direction to the respondents to reinstate him.

11. For the above discussion, the petitioner has no merit. It is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

DECEMBER 23, 2015

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