

\$~2

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

+ W.P.(C) 5811/2015

SUKHWINDER SINGH GILL

..... Petitioner

Through: Ms Shilpa Chohan, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms Barkha Babbar, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

%

15.07.2015

The petitioner is aggrieved by the rejection of his representation seeking his reinstatement to the Border Security Force (BSF).

The brief facts are that the petitioner joined BSF on 05.10.1987. During the tenure of his service, on 27.12.1995, BSF issued a Circular, stating that those who had completed 15 years of service or more could resign under Rule 19 of the BSF Rules, 1969 and would be granted pensionary benefits. On 20.10.1997, the petitioner proceeded to resign in the said manner, but this resignation was accepted by BSF, without any pensionary benefits and petitioner had residual period of 307 days left for completion of qualified service which would entitle him for pension. On the basis of the 1995 Circular, several employees and officials had resigned from the BSF and were drawing pension. On 13.10.1988, the BSF realized that the

initial Circular dated 27.12.1995 was issued on a misreading of the regulation and, therefore, clarified by yet another Circular that such employees who had resigned with pensionary benefits would no longer be entitled to the same. This led to litigation; the matter eventually reached to the Supreme Court in its reported judgment ***Union of India vs. Rakesh Kumar: 2001 (4) SCC 309***, wherein the Apex Court on interpretation of the rules held that in case of resignation and acceptance by competent authorities, members of BSF would be entitled to get pensionary benefits if they are otherwise eligible under the pension rules. The subsequent judgment, i.e., ***Raj Kumar and Others vs. Union of India and Another (2006) 1 SCC 737***, resulted in the BSF being compelled to give option to such of the employees who had resigned and sought pension.

In ***Raj Kumar (supra)***, it was observed that “*there cannot be any equity in favour of those that failed to avail of the opportunity of rejoining service. If any of them failed to take advantage of the offer for re-induction into service, they have only themselves to thank. In such cases, obviously, there cannot be any relief granted in the present writ petitions, contrary to the law declared by Rakesh Kumar.*”

The petitioner apparently had represented in the year 1998, complaining that pensionary benefits were wrongly denied to him. However, his representation was rejected. Thereafter, the petitioner made other representations on 30.01.2001 and 07.06.2004 stating that he ought to be given the option to rejoin the service like others. The respondents did not react and merely appeared to have assured a

service association that representations were being examined. Eventually, on 02.06.2014 and on 25.04.2015, the petitioners' representations were rejected.

Learned counsel for the petitioner highlights that the petitioner's case is not different from others who had resigned and that the injustice compounded by the denial of the pension cannot be a legitimate ground of distinguishing him from others who were entitled to be reinstated. It is argued that having completed more than 19 years, he resigned on personal compulsion and at the first available opportunity in 1998, on becoming aware of the entitlement to pension sought for it. The respondents did not consider it favourably even despite the fact that at that point of time those who have completed 15 years were entitled to the benefit, *ex facie* rendering his case stronger than the others. It is secondly argued that the pendency of representations and the unduly long period taken by the respondents to decide it cannot prejudice the petitioner given the fact that two Supreme Court rulings clearly entitled him to the reliefs sought.

This Court has carefully considered the circumstances. It is evident from the pleading that when the petitioner resigned—even though Circular dated 27.12.1995 (entitling persons to pension after completion of 15 years) existed, he did not wish to leave the force for that purpose. The effect of the Circular which was based on a misinterpretation was sought to be reversed in the sense that those who have resigned on the faith of their obtaining pension were sought to be accommodated by the later turn of events (subject to certain conditions such as return of pensionary benefits, i.e., gratuity and

other terminal benefits). The stark fact remains that in the case of the petitioner, the fact which stands out is that the petitioner did not apparently seek benefit of the 1995 Circular at all. He resigned from the force and apparently obtained private employment. He rested content with that situation, except that he made certain periodic representations of 1998, 2001 and 2004. It is settled law that mere representations or repeated representations do not in any manner defeat the operation of the doctrine of laches (*S.S. Rathore vs. Union of India AIR 1990 SC10*).

Having regarding to the entirety of the circumstances, this Court is of the opinion that the petitioner has approached for relief under Article 226 after an inordinate delay of about 15 years. Intervention, in these circumstances is not called for.

The writ petition is, therefore, dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JULY 15, 2015

bg