

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7124 of 2015 (O&M)

Date of Decision:- 20.09.2016.

Vikas Abrol

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Rajeev Anand, Advocate for the petitioner.

Ms. Anita Balyan, Advocate for Union of India-
respondents.

P.B. BAJANTHRI, J. (Oral)

CM No.11462-CWP of 2016

CM for placing on record additional affidavit on behalf of
Inspector General is allowed for the reasons stated in the application as well
as affidavit.

CM No.11606-CWP of 2016

CM for placing on record the counter affidavit to the additional
affidavit dated 17.8.2016 filed by the respondents along with Annexure P-
35 to P-40 is allowed for the reasons stated in the application as well as
affidavit.

CWP No.7124 of 2015

1.) In the instant writ petition, the petitioner has challenged the
order dated 18.3.2015 (Annexure P-30) by which his grievance relating to
grant of pro-rata pension has been declined. The petitioner was selected as

Sub-Inspector (General Duty) in Border Security Force (for short 'BSF').

He was promoted to the cadre of Inspector in the month of April, 2007. While he was on deputation under Special Protection Group, he had applied for the post of Deputy Superintendent of Police and Inspector in Special Protection Unit of Punjab Police. His application was forwarded through proper channel and it was in order. The petitioner was selected and appointed to the post of Inspector in the Police Department, State of Punjab. Consequently, he has submitted his resignation. The same was accepted on 14.2.2014 and he was relieved on 14.2.2014. On 20.2.2014, he joined the Punjab Police Service. The petitioner is stated to have submitted representation for grant of service benefits rendered in BSF. The same has been declined vide communication dated 18.3.2015 (Annexure P-30). Thus, the petitioner is challenging the communication dated 18.3.2015 (Annexure P-30) in the present petition.

2.) Learned counsel for the petitioner submitted that service rendered in BSF is required to be considered for the purpose of grant of service and monetary benefits in view of Rule 26 (2) of the Central Civil Services (Pension) Rules, 1972 (for short 'the 1972 Rules') since his appointment in the Punjab State Police service is through proper channel and resignation has been accepted under Rule 26(2) of the 1972 Rules. Even for the purpose of qualifying service, he relied on Rule 13 of the 1972 Rules. Proviso to Rule 13 of the 1972 Rules is a beneficial clause to such of those persons who have switched over to another service. Therefore, declining service and monetary benefits by the respondents to the petitioner is contrary to Rule 26(2) read with Rule 13. Learned counsel for the petitioner relied on Annexure P-32 dated 26.7.2005, Official Memorandum relating to counting of past service on submission of technical resignation

on or after 01.01.2004 by the employees governed by the 1972 Rules. Clause (iii) of para 2 reads as under:-

“(iii) All the Central Government employees who entered Central Government service or the service of an Autonomous Body set up by Central Government, on or before 31-12-2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rule 1972 and who submit technical resignation on or before 1-1-2004, to take up new appointment under the State Government, will be eligible for grant of pro-rata pensionary benefits for the period of Central Government or Central Autonomous Body service, on the lines as provided in the Rule 37 of Central Civil Service (Pension) Rules, 1972 and related order.”

Therefore it was contended that the petitioner is entitled for grant of pro-rata pensionary benefits for the period of service rendered by him in BSF.

3.) On the other hand, learned counsel for the respondents submitted that petitioner's application for the post of Inspector in Punjab Police service is not in accordance with Rule 26 (2) of the 1972 Rules. Permission has been granted hurriedly and in between grant of No Objection Certificate to participate in the process of selection to the post of Inspector in the Punjab Police and date of resignation, an inquiry was initiated. However, the respondents-Union of India did not notice that inquiry was pending as on the date of submission of resignation. Therefore, the petitioner is not entitled for pro-rata pension as his resignation to the post held in BSF was not in public interest. It was further argued that even if Rule 26(1) of 1972 Rules is taken into consideration, the petitioner is not

entitled for pro-rata pension. Under Rule 26 (2) of the 1972 Rules, unless qualifying service by an employee is not entitled for pro-rata pension.

4.) Heard learned counsel for the parties.

5.) The respondents' contention is that petitioner's taking up another appointment in a State service was at his own interest and not in public interest. Therefore, the service rendered in BSF cannot be counted for the purpose of grant of pro rata pension. Perusal of Rule 26 (1) and (2) of the 1972 Rules, it is evident that petitioner's case would fall under Rule 26 (2). Rule 26 (1) and (2) read as under:-

“26. FORFEITURE OF SERVICE ON RESIGNATION

(1) Resignation from service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.”

6.) Reading of Rule 26(2) of the 1972 Rules, it is clear that petitioner's case would fall under Rule 26 (2) for the reasons rightly or wrongly, the respondents have entertained the petitioner's application for taking up another appointment, namely, Police Inspector in the Punjab Police Service in the State of Punjab. Even the resignation has been accepted by the respondents. The respondents now cannot contend that petitioner's request for taking up another appointment in State of Punjab service is not in accordance with law and further to contend that in between

facing inquiry. It is to be noted that the respondents had full power to withhold or reject resignation if the inquiry is pending and further if the request of the petitioner's application through proper channel to take up another appointment in Punjab State Civil service also could have been withheld or they could have informed the Punjab State Police service that petitioner's application for the post of Inspector in Punjab Police service is not in accordance with the Rules and to stall appointment of petitioner as Police Inspector. For not taking timely action by the respondents and in view of the latter development that petitioner's resignation was accepted and he is discharging the duties of the post of Inspector in the Punjab State Police service, the respondents cannot deny the pro-rata pension under Rule 26 (2) of the 1972 Rules read with Official Memorandum dated 26.7.2005 (Annexure P-32) for which the petitioner is entitled to pro-rata pension for the service rendered in the BSF. The petitioner has rendered 12 years of service in BSF. The same cannot be denied to him for the purpose of extending monetary benefits. In view of the above facts and circumstances, Annexure P-30 dated 18.3.2015 is liable to be set aside.

7.) Order dated 18.3.2015 (Annexure P-30) is set aside. The writ petition is allowed and the respondents are directed to re-consider the grievance of the petitioner to grant pro-rata pension for the service rendered by him in BSF from 4.2.2002 to 14.2.2014 within a period of six months.

(P.B. BAJANTHRI)
JUDGE

September 20, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.