

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.2051 of 2011
Date of Decision:17.11.2016**

Shri Malkiat Singh

... Appellant

Vs.

The Union of India and others

... Respondents

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

Present : Mr. Surinder Sharma, Advocate for the appellant.
Mr. Vivek Singla, Advocate for respondents No.1, 3 and 4.
Mr. Rahul Verma, A.A.G. Punjab.

P.B. BAJANTHRI J.

In the instant appeal, the appellant has questioned the validity of the trial as well as appellate court orders dated 11.10.2007 and 26.11.2010 respectively.

The appellant was initially appointed as a constable in the Punjab State Government in the year 1966. Thereafter, his services were transferred to Border Security Force (for short "BSF"). While working in BSF, on 7.11.1981, he had submitted resignation on domestic problems. The same was accepted by the competent authority on 26.11.1981 from the date of submission of resignation letter. Admittedly the order of acceptance of resignation was not communicated to the appellant. At the same time, the appellant did not pursue the resignation letter relating to acceptance or rejection and further he remained silent about the acceptance of resignation. In other words, he has not attended the duty to contend that whether his resignation is accepted or rejected. Thereafter, the appellant approached the respondents to release retiral benefits as well as pension. The same was declined vide communication dated 11.1.1982 that the appellant's request for retirement has been accepted and he would be given proportionate pension and other retiral benefits. Since there was no response relating to

disburse monetary, retiral benefits, he filed suit before the trial court. Trial court decreed the suit in part stating that the appellant is entitled to proportionate pension for the service rendered in BSF from 1966 to 1989 and the respondents were directed to disburse his pensionary benefits and further directed the respondents to pay arrears prior to 38 months before filing of the suit.

Both the State of Punjab and Union of India feeling aggrieved by the decree passed by the trial court preferred an appeal before the appellate court. The same was disposed of on 26.11.2010 while reversing the order of the trial court. Thus, the appellant has presented this appeal.

Learned counsel for the appellant submits that even though the appellant has resigned the post, the acceptance of the same has not been communicated by the respondent-Union of India and further while corresponding with the respondents, the respondents have admitted that the appellant is entitled to proportionate pension. Thus, the appellate court has erred in reversing the order of the trial court. It was further submitted that while accepting resignation, the competent authority has held that notice for resignation tendered by Malkiat Singh-constable of this unit on 7.11.191 under Rule 19 of Border Security Force Rules, 1969 is hereby accepted from the date of submission of the resignation after having granted him pensionary benefits of qualifying service rendered by the individual. He will be SOS of this unit w.e.f. 8.11.1981 (for all purposes). In view of the letter dated 1.11.1982, the respondents are of the view that the appellant is entitled for prorate pension and papers were forwarded to the competent authority in Delhi but the same was returned with the remarks that the appellant is not entitled for the pension on the score that he resigned the

post and he has not completed 20 years of qualifying service to claim pension. Thus, the appellant filed suit and suit was decreed. The appellate court failed to appreciate the fact that the appellant is entitled to prorate pension. Learned counsel for the appellant relied on Rule 49 of Central Civil Services (Pension) Rules, 1972 (for short “1972 Rules”) to contend that even an employee who has rendered 10 years of service is entitled to pension.

On the other hand, learned counsel for respondents No.1,3 and 4 submitted that the appellant has resigned on 7.11.1981 and it was accepted on 26.11.1981 from the date of submission of resignation. As per Rule 48-A of the 1972 Rules, one must fulfill 20 years of qualifying service for the purpose of claiming pension. In the present case, the appellant has not completed 20 years of service, therefore, he is not entitled for pension as claimed by him. Moreover, the appellant has resigned the post. A person who resigned the post, is not entitled for any pensionary benefits. Learned counsel for the respondents relied on the decision of the Supreme Court rendered in Union of India v. Rakesh Kumar, 2001 (4) SCC 309 wherein the Supreme Court has interpreted Rule 49 of the 1972 Rules. It was further contended by the learned counsel for the respondents that merely stating in some orders that an employee is entitled for pension, it does not mean that he is entitled for pension unless and until he fulfills the eligibility criteria under the relevant rules for seeking pension as in the present case under Rule 48-A of the 1972 Rules, one must fulfill the qualifying service of 20 years which the appellant does not fulfill. Therefore, he is not entitled for pensionary benefits. The appellate court rightly reversed the order of the trial court.

Heard the learned counsel for the parties.

Question for consideration in the present case is whether the appellant is entitled for pension or not?

The appellant joined service in the year 1966 in the State of Punjab. While working as such, his service were transferred to BSF. While working in BSF as a constable, he resigned on 7.11.1981 and the same was accepted by the competent authority on 26.11.1981 from the date of submission of resignation. Having regard to the service particulars, the appellant do not fulfill the qualifying service of 20 years as required under Rule 48-A of 1972 Rules for grant of pension. Merely mentioning that the appellant is entitled for pensionary benefits on various correspondence among the respondents that does not give any right to the appellant to seek pension or retiral benefits having regard to the fact that the appellant has resigned the post read with not completed 20 years of qualifying service. Therefore, the appellant has not made out a case so as to interfere with the order of the the appellate court. Even looking at the decision of the Supreme Court in the case of **Rakesh Kumar** (supra), the Supreme Court while interpreting Rule 49 of the 1972 Rules has held that one must fulfill the qualifying service of 20 years for the purpose of claiming pensionary benefits.

In view of these facts and circumstances, the appellant has not made out a case so as to interfere with the appellate court order.

Accordingly, the appeal stands dismissed.

17.11.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No