

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 316

Civil Writ Petition No.14568 of 1993 (O & M)
Date of Decision: May 16, 2018

Rajinder Singh & others

..... PETITIONERS

VERSUS

Union of India & others

..... RESPONDENTS

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CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mrs. Rahish Pahwa, Advocate, for the petitioners.

Mr. Prateek Gupta, Advocate, for the respondents.

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Jaspal Singh, J

By virtue of the instant petition filed under Article 226 of the Constitution of India, petitioner – Sohan Singh (since deceased), through LRs, has sought a writ in the nature of Mandamus, declaring the action of the respondents in rejecting his claim to pension and other retiral benefits vide order No.HA/Pen/SS/41/93/2014 dated June 05, 1993 (Annexure P-1) as illegal, arbitrary, discriminatory, capricious, in infraction of rules of natural justice and violative of Articles 14, 16, 21, 19(1)(F), 31(1), 300-A, 309 of the Constitution of India, as well as issuing direction to the respondents to pay pension and other retiral benefits to him and arrears thereof including interest @ 18% per annum.

Contention of learned counsel for the petitioner is that petitioner was discharged on resignation, forced by circumstances, s Havildar, from 41 Battalion, BSF on July 03, 1970 (Annexure P-2) after having put in 21 years, 6 months and 15 days service. The petitioner had been making requests time and again for release of pension and other retiral benefits and when respondents did not respondent/accede to his requests, he served a legal notice dated December 11, 1992 (Annexure P-3) upon the respondents, claiming all the reliefs. However, in response to the said legal notice, petitioner was informed by the Commandant, 41 Battalion, BSF, Chhawla Camp, New Delhi (respondent No.2), vide registered letter No.Estt/163/41/93/172 dated February 05, 1993 that he should fill up the necessary forms for preparation of pension case within 15 days. In pursuance of the said letter, he completed all the necessary formalities and handed over the papers to respondents on February 06, 1993. However, subsequent thereto, vide letter dated June 05, 1993 (Annexure P-1), he was informed that his pension case is not covered under BSF Rule 19 for grant of pensionary benefits.

While assailing aforesaid order dated June 05, 1993, learned counsel for the petitioner(s) has contended that when petitioner sought retirement on July 03, 1970, rules of voluntary retirement were not in-force or vogue as the rules pertaining to voluntary retirement were not available at that time. Had voluntary retirement rules been available on July 03, 1970, petitioner would have natural applied for voluntary retirement having put in 21 years, 6 months and 15 days service on the date of his retirement, and as such, he had no option except to resign after having service for more than 21 years qualified service. The petitioner has been declined the relief of pension

in view of provisions contained in Rule 19 of the BSF Rules, 1969 (for short, 'Rules'), which does not completely debar in special circumstances of the case, Government may permit any officer of the Force to resign before attaining the age of retirement or before putting in said number of years or as may be necessary under the rules to be eligible for retirement. In the instant case, petitioner has served for more than 21 years and thus, he deserves pension.

This Court has given deep thought to the aforesaid submissions made by learned counsel for the petitioner(s) but finds the same to be without any legal and factual weight.

The petitioner retired on his own accord on July 03, 1970. Though he served the Department, before his resignation, for a period of 21 years, 6 months and 15 days, yet under the Rules, he is not entitled for pension. Vide impugned letter dated June 05, 1993 (Annexure P-1), petitioner was categorically conveyed that his case is not covered under BSF Rule 19 for grant of pensionary benefits and as such, he is not entitled to same. Though his pension papers were got filled and case was forwarded to the competent authority, but recommendation itself is not suffice. Since, case of the petitioner is not covered under BSF Rule 19, which requires minimum service of 25 years, the relief claimed with regard to pension has rightly been declined. In the case in hand, petitioner had tendered voluntary resignation at his own accord which was accepted by the then Commandant, 41 Battalion, BSF, and as per Rule 26 of Central Civil Services (Pension) Rules, 1972 (for short, 'CCS Rules'), resignation entails forfeiture of past service and provision regarding retirement on completion of 20 years of service was introduced in the CCS Rules vide notification dated November

28, 1978 which was made operative prospectively. Since, petitioner resigned voluntarily from service on July 03, 1970 and voluntary retirement under Rule 48-A of CCS Rules 1972 was introduced in the year 1978, benefit thereof was not available to him. No doubt, under the CCS Rules, a government employee who has completed 20 years of qualifying service, was competent to resign after giving three months' notice in writing to the competent authority but the said Rule 48-A became operative in the year 1978 whereas petitioner had resigned much prior thereto, in the year 1970. The mere fact that petitioner has completed more than 20 years of service, is not suffice to grant him the benefit claimed through the instant petition. Since petitioner has not served the respondents for the requisite number of years prior to his resignation entitling him to grant pension, the same has been rightly declined by the respondents vide impugned order dated June 05, 1993. Thus, impugned order does not call for any interference by this Court as there is no infirmity or illegality therein.

In the light of aforesaid discussion, instant writ petition is dismissed with no order as to costs.

May 16, 2018
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No