



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

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Date of decision: May 06, 2024

+ W.P.(C) 6404/2024 & CM APPL. 26602/2024,
CM APPL. 26842/2024 and CM APPL. 26843/2024

UTTAM SAMADDER Petitioner
Through: Mr. Krishna Kumar Yadav, Adv.

versus

THE UNION OF INDIA THR. SECRETARY HOME AFFAIR,
GOVERNMENT OF INDIA & ORS. Respondents
Through: Mr. Chiranjeev Kumar, SPC with
Mr. Rahul Kumar Sharma, Govt.
Pleader.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE GIRISH KATHPALIA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 26602/2024, CM APPL. 26842/2024 and CM APPL. 26843/2024

Exemptions allowed subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 6404/2024

1. This petition has been filed by the petitioner with the following prayers:

“In these facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to: -

i. Issue a writ in the Nature of Certiorari to quash the order passed by the S.S. Sandhu Commandant 100 BN, BSF dated on 15.10.1999 along with Affidavit.; or/and,



ii. Issue a mandamus directing the Respondents to pay full pension, gratuity, leave encashment, along with interest; or/ and

iii. ISSUE writ of mandamus inter-alia directing the respondents to grant pensionary benefit to petitioners under Rule 49 (2) (b) of the CCS Pension Rules, 1972; or/and

iv. Pass any other order as this Hon'ble Court may deem fit and proper.”

2. Suffice to state, this is a second round of litigation initiated by the petitioner inasmuch as he had earlier filed a petition before the Calcutta High Court, being W.P.14058 (W) of 2003, which was disposed of on October 4, 2004, by *inter alia* stating as under:

“Having heard the learned counsel appearing for the parties and considering the facts and circumstances of this case, I am of the view that the grievance of the petitioner should be considered sympathetically by the superior authority.

In the aforesaid circumstances, liberty is granted to the petitioner to submit a representation before the Director General (Personnel), Boarder Security Force H.C. respondent No.2) within two weeks from date. If such representation is filed on behalf of the petitioner, then the said Director General (Personnel), Boarder Security Force H.Q. will consider and dispose of the same sympathetically within a period of four weeks from the date of receipt of such representation.

Needless to mention that the said Director General (Personnel), B.S.F will pass a reasoned order in the matter in accordance with law and will communicate a



copy of the same to the petitioner within a week from the date of such order.

The learned Advocate for the petitioner is directed to communicate the gist of this order to the said Director General (Personnel) along with his representation. This writ petition is thus disposed of."

3. Perusal of the aforesaid order reveals that the claim of the petitioner for grant of pensionary benefit and gratuity was not considered in his favour. Be that as it may, pursuant to a communication dated October 28, 2019, sent by the Director General, Boarder Security Force/ respondent No.2 ('BSF', for short) to the Commandant-100, BSF, Walbakgre, Tura, Meghalaya / respondent No.4, whereby the latter was directed to examine the case of the petitioner and send a suitable reply, the respondent No.4, accordingly, sent a letter dated January 24, 2020, to the petitioner, wherein in paragraphs 4 and 5, it was stated as under:

"4. In the above reference it is to be again informed to you that your pension was approved on 15.10.1999 under Rule 19 (1) of BSF Rules 1969, alongwith the pensionary benefits and premature retirement pension was approved in your favour. But the Hon'ble High Court of Delhi vide order dated 30.03.2001 had held premature retirement pension released under Rule 19 (1) by BSF as ineligible pension, subsequent to that your pension was stopped with immediate effect. Subsequent to that the Hon'ble High Court of Delhi issued another order on 04.01.2006 under which order for recalling on duty those personnel who has resigned under Rule 19(1) was passed.



5. *In compliance with the order dated 04.01.2006 passed by the Hon'ble High Court of Delhi you were granted many opportunities to join the duty in this battalion but you did not join on duty and you are yourself responsible for the same. According to Rule 48(A) of CCS (Pension) Rules 1972 for getting pension completion of 20 years of service is necessary. Your total period of service in BSF was 10 years and 7 months only therefore you are not entitled for receiving pension and your request is not considerable."*

4. In effect, the petitioner is aggrieved by the action of the respondents not to grant him gratuity and pensionary benefits after the petitioner had been voluntarily resigned from the respondents' Force.

5. The relevant facts as noted from the petition are that the petitioner was appointed as Constable (Tradesman) in BSF on February 27, 1989. He tendered his resignation from service on October 15, 1999 for certain personal reasons. The said resignation was accepted by the respondents on October 15, 1999, by stating as under:

"1. Resignation from the service tendered by No.891513553 Constable Uttam Samadder of "F" Coy, this unit on personal ground/ domestic problem is hereby accepted under the provision on rule 19 of BSF Rule, 1969 to be effective from wef, 15 October, 1999 without pensionary benefits since he has not completed the requisite minimum 20 year of qualifying service has to be eligible for pensionary benefit under the C.C.S (Pension) rule, 1972, applicable to all central government employees including, BSF personnel.

2. The period of 97 days (Ninety Seven) Days' overstays of leave by the individual is hereby regularised by granting him EOL with effect from wef 02.06.99 to 06.09.99. This is in continuation of 60 days Earned



leave granted to him earlier wef 03.04.99 to 01.06.99. No pay and allowances would be admissible: to the individual for EOL- (Extra Ordinary Leave) period.

3. No.891513553 Constable Uttam1 Samaddar be struck off the strength of this unit wef 15 October, 1999 afternoon.”

6. As such, the question which arises for consideration before this Court is whether the petitioner is entitled to pensionary benefits / gratuity having resigned with over 10 years of service. It is the case of the petitioner and so contended by the learned counsel for the petitioner that the petitioner having put in 10 years 7 months and 18 days of qualifying service, he is entitled to pensionary benefits/ gratuity.

7. The counsel for the petitioner has relied upon the judgment of the High Court of Kerala in the case of **EX. L/ N.K.P.A. Nazar v. The Director General Border Security Force and Ors., O.P. No. 30745/1999** decided on June 21, 2000, to contend that even if an officer has tendered his resignation he shall still be entitled to pension having completed the qualifying service. Reliance has also been placed upon the judgment of the Supreme Court in the case of **Union of India and Ors. v. Lt. Col. P.S. Bhargava, (1997) 2 SCC 28**, in support of his submission that even in the case of resignation, an employee is entitled to pension.

8. We are unable to agree with the said submission made by the learned counsel for the petitioner in view of settled position of law as far as scope of Rule 19 of the BSF Rules, 1969 ('Rules of 1969, for



short) is concerned. We may, at the outset, reproduce Rule 19 of the Rules of 1969, as under, for ready reference:-

19. Resignation - (1) The Central Government may, having regard to the special circumstances of any case, permit any officer of the Force to resign from the Force before the attainment of the age of retirement or before putting in such number of years of service as may be necessary under the rules to be eligible for retirement. Provided that while granting such permission the Central Government may:-

(i) require the officer to refund to the Government such amount as would constitute the cost of training given to that officer 1[or three months pay and allowances, whichever is higher, or Provided further that an officer of the Force tendering resignation, for accepting a job under Central or State Governments or local bodies, after having been granted cadre clearance for the same or who has completed 10 years of service shall not be required to refund the sum as provided here in above.

(2) The Central Government may accept the resignation under sub rule (1) with effect from such date as it may consider expedient.

(3) The Central Government may refuse to permit an officer to resign:

(a) if an emergency has been declared in the Country either due to internal disturbances or external aggression; or

(b) if considers it to be inexpedient so to do 2[due to exigencies of service or in the interests of the discipline of the Force; or



(c) if the officer has specifically undertaken to serve for a specified period and such period has not expired.

(4) The provisions of this rule, shall apply to and in relation to subordinate Officer and Enrolled Persons as they apply to and in relation to any officer of the Force and the powers vested in the Central Government under sub-rules (1) and (2) shall be exercised in the case of a Subordinate Officer by a Deputy Inspector General and in the case of an Enrolled Person by a Commandant."

9. From perusal of the same, it is clear that resignation from respondents' Force is governed by Rule 19 of the Rules of 1969. Though reliance has been placed by the counsel for the petitioner on Rule 49 of the CCS Pension Rules, 1972 ('Rules of 1972', for short) to contend that the petitioner is entitled to pension, the same is without referring to Rule 26 of the Rules of 1972 which stipulates that resignation from service shall entail forfeiture of past service. In that regard, the fact that the petitioner had tendered resignation is not disputed. If that be so, even if the petitioner has put in 10 years or above service, the same stood forfeited on resignation. Rule 26 of the Rules of 1972, is reproduced as under for ready reference:-

26. Forfeiture of service on resignation.- (1) Resignation from a 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.



(3) *The order accepting the resignation should clearly indicate that the Government servant has resigned to join another appointment with proper permission and a specific entry to this effect shall also be made by the Head of Office in the service book of the Government servant.*

(4) *Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.*

(5) *The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-*

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper ;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person applies for permission to withdraw the resignation is not more than ninety days;

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.



(6) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(7) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

(8) A resignation submitted for the purpose of rule 35 or rule 36 shall not entail forfeiture of past service under the Government.

10. Insofar as reliance placed by the learned counsel for the petitioner on the judgment in the case of **EX. L/ N.K.P.A. Nazar (supra)** is concerned, perusal of the same reveals that the resignation of the petitioner therein on completion of 10 years and 8 months of service was accepted by the respondents therein with clear stipulation that the acceptance of resignation was with full pensionary benefits in accordance with order dated December 27, 1995 read with Rule 19 of the Rules of 1972.

11. It is not such a case here, as the same can be seen from the order passed by the respondents on October 15, 1999, which we have already reproduced in paragraph 5 above that the resignation was accepted without pensionary benefits as the petitioner had not



completed requisite minimum 20 years of qualifying service to be eligible for pensionary benefits under the Rules of 1972.

12. It may be stated here, the BSF has issued a G.O. dated December 27, 1995, whereby the decision was conveyed to Director General, BSF, for grant of pensionary benefits on resignation under Rule 19 of the Rules of 1969. The issue, whether an employee of the respondents' Force shall be entitled to pension under Rule 19 of the Rules of 1969 read with Rule 49 of the Rules of 1972 came up for consideration before the Supreme Court in the case of ***Union of India and Ors. v. Rakesh Kumar, Civil Appeal No. 6166/1999***, wherein the Supreme Court has held as under:

“19. The aforesaid G.O. makes it clear that there was a demand for grant of pensionary benefit on accepted by the Government. Paragraph 2 of the G.O. makes it clear that Government has agreed that member of the BSF is entitled to get pensionary benefits on resignation under Rule 19 provided he has put in requisite number of years of service and fulfills all other eligibility conditions. Paragraph only reiterates Rule 19. It also clarifies that authority conditions. Paragraph only reiterates Rule 19. It also empowered to make reduction in pension of the member of the BSF is eligible to get such pension. Paragraph 5 provides that in future the competent authority who accepts the resignation would specify in order the reduction to be made in the pension if any and if no such reduction is specified in the order, it would imply that no reduction in the pension has been made. Under paragraph 6 directions are issued for pending cases where resignation was accepted but pensionary benefits were not allowed and provide that necessary orders should be passed within shortest possible time. Reading the aforesaid G.O. as a whole, it no where reveals Government's intention to confer any additional



pensionary benefit to the members of the BSF who retired before completing the requisite qualifying service as provided under the CCS (Pension) Rules. It neither supplements nor substitutes the statutory rules. The G.O. read with Rule 19 of the BSF Rules would only mean that in case of resignation and its acceptance by the competent authorities, the member of BSF would be entitled to get pensionary benefits if he is otherwise eligible for getting the same under the CCS (Pension) Rules and to that extent Rule 26 which provides for (CIC) of service on resignation would not be applicable. Hence, there is no substance in the contention of the learned counsel for the respondents that in view of the G.O. or specific order passed by the competent authority granting pension, appellants are estopped from contending that such officers are not entitled to get pensionary benefits. As stated above, the G.O. does not confer any additional benefit. Even the specific order which is quoted above in favour of Naik Rakesh Kumar, the authority has stated that he would get pensionary benefits as admissible under the Rules. Under the Rules, he is not entitled to get such benefits.

20. Learned counsel for the respondents submitted that on the basis of G.O., number of persons are granted pensionary benefits even though they have not completed 20 years of service, and, therefore, at this stage, Court should not interfere and see that the pensionary benefits granted to the respondents are not disturbed and are released as early as possible. In our view, for grant of pension the members of a BSF are governed by CCS (Pension) Rules. CCS (Pension) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only provides that if a member of the force who resigns and to whom permission in writing



is granted to resign then the authority granting such permission may reduce the pensionary benefits if he is eligible to get the pension. Therefore, by erroneous interpretation of the rules if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate (SIC), the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the statutory rules nor there can be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement expect in those cases where there are special provisions.

21. In the result, there is no substance in the contention of the learned counsel for respondents that on the basis of Rule 49 of the CCS (Pension) Rules or on the basis of G.O., the respondents who have retired after completing qualifying service of 10 years but before completing qualifying service of 20 years by voluntary retirement, are entitled to get pensionary benefits. Respondents who were permitted to resign from service under Rule 19 of the BSF Rules before the attainment of the age of retirement or before putting such number of years of service, as may be necessary under the Rules, to be eligible for retirement are not entitled to get any pension under any of the provisions under CCS (Pension) Rules.



Rule 49 only prescribes the procedure for calculation and quantification of pension amount. The G.O. dated 27.12.1995 does not confer any additional right of pension on the BSF employees.”

(emphasis supplied)

13. The Supreme Court has also observed that the G.O. dated December 27, 1995 does not confer any additional right of pension on the BSF employees. Further, the Supreme Court had drawn a distinction between the employees, who had resigned earlier to the circular dated December 27, 1995 and had been granted pension for special reasons and continued to draw it and held that in the case of such employees, there can be no stoppage of pension, in equity, as they have drawn pension for long periods; they shall not be asked to refund the pension amount nor the pension can be stopped in those cases (Ref. ***Dharamvir Yadav vs. Union of India and Ors.*** MANU/DE/1052/2014).

14. It is an admitted fact that the petitioner had resigned much after December 27, 1995, i.e., on October 15, 1999. Therefore, in view of the *dicta* of the Supreme Court in ***Rakesh Kumar and Ors.*** (*supra*), it is clear that the petitioner is neither entitled to any pensionary benefits/gratuity, nor the same were given to him.

15. The judgment of the ***Rakesh Kumar and Ors.*** (*supra*) has been followed by the Supreme Court in its subsequent judgment in the case of ***Union of India v. Madhu E.V. and Ors.***, MANU/SC/0342/2012, wherein the Supreme Court has held as under:

“12. In view of the decisions of this Court in *Union of India and Ors. v. Rakesh Kumar* (*supra*) and *Raj Kumar & Others v. Union of India and Another* (*supra*), the legal position that emerges is this : Rule 19 of the BSF



Rules does not entitle any pensionary benefits on resignation of its personnel. The pensionary benefits are not ordinarily available on resignation under CCS (Pension) Rules since Rule 26 provides for forfeiture of service on resignation. However, by virtue of G.O. dated December 27, 1995 read with Rule 19 of BSF Rules, the member of BSF would be entitled to get pensionary benefits if he is otherwise eligible. Such personnel must, therefore, satisfy his eligibility under CCS (Pension) Rules. The CCS (Pension) Rules do not provide that a person who has resigned before completing 20 years of service is entitled to the pensionary benefits. Rule 49 only prescribes the procedure for calculation and quantification of pension amount and not the minimum qualifying service.

13. The view taken by the Single Judge and judgment of the Division Bench upholding the view taken by the Single Judge cannot be upheld and have to be set aside in light of the legal position noted above.

14. In the present case, the Respondents had resigned from BSF service immediately after completion of 10 years service and, therefore, they are not entitled to any pensionary benefits.

15. We, accordingly, allow these Appeals and set aside the orders dated August 25, 2000 passed by the Division Bench and dated September 29, 1999 passed by the Single Judge. We, however, observe that amount of pension paid to the Respondents herein, if any, shall not be recovered.”

(emphasis supplied)

16. Insofar as the Judgment relied upon by the counsel for the petitioner in the case of **Lt. Col. P.S. Bhargava** (*supra*) is concerned, the same relates to grant of pension to the personnel of Army. This



Court is not concerned with the grant of pension in the Army and hence, the same shall have no applicability in the facts of the present case.

17. Insofar as reliance placed by learned counsel for the petitioner on a list submitted by him related to BSF personnel who had resigned under Rule 19 of the Rules of 1969 between the period January 1, 1981 to January 1, 1984, during the hearing is concerned, on a *prima-facie* view, the same consists of personnel, who were given the pensionary benefits prior to December 27, 1995. In any case, even if anyone has been given pensionary benefits post December 27, 1995, the issue having been settled by the Supreme Court in ***Rakesh Kumar and Ors. (supra)***, to the effect that personnel of the BSF, who have tendered voluntary resignation and not completed qualifying service of 20 years are not entitled to the pensionary benefits, this plea of the learned counsel for the petitioner is liable to be rejected.

18. In view of our conclusion above, we do not see any merit in the petition. The same is dismissed. No Costs.

V. KAMESWAR RAO, J

GIRISH KATHPALIA, J

MAY 06, 2024/jg