



2024:DHC:5075-DB



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

*Date of decision: 09.07.2024*

+ W.P.(C) 9233/2024

EX CONS. DAMODAR SINGH

.....Petitioner

Through: Mr. Ravi Kumar, Adv.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Sahaj Garg, SPC with Mr. S.P. Srivastava, GP with Mr. Hemendra Singh, DC, Law BSF for UOI.

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

**J U D G M E N T**

**REKHA PALLI, J (ORAL)**

**CM APPL. 37833/2024 (exemption)**

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

**W.P.(C) 9233/2024**

3. The present writ petition under Article 226 of the Constitution of India filed by an ex-constable of the Border Security Force (BSF), seeks to assail the order dated 23.11.2021 vide which his representation for grant of pensionary benefits in accordance with the decision of the Apex Court in *Raj Kumar and Ors. Vs. Union of India 2006 (1) SCC 737*, has been rejected by the respondents.

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4. At the outset, we may note that the petitioner joined the BSF on 08.07.1971 and took voluntary discharge after completing about 11 years of service on 16.07.1982. It is the petitioner's case that though at the time of his voluntary discharge he was given an oral assurance that he will be paid full pensionary benefits, the same were not released to him till 05.05.1997. These pensionary benefits were, however, stopped by the respondents in view of the decision of the Apex Court in ***Union of India & Ors. Vs. Rakesh Kumar*** 2001 (4) SCC 309, on the premise that the circular dated 27.12.1955, based on which employees who had resigned after 10 years were also being granted pension, was no longer valid.

5. Aggrieved by the sudden stoppage of pension on the basis of this decision, which the force personnel had been receiving in pursuance to the circular dated 27.12.1995, various personnel approached the Apex Court for restoration of pension, which petitions came to be decided on 04.01.2006 in ***Raj Kumar and Ors. Vs. Union of India*** 2006 (1) SCC 737. Though, vide the aforesaid decision, the Apex Court declined to interfere with the decision of the respondents to stop pension of those employees who had been granted pension pursuant to the circular dated 27.12.1995, the Court directed that in peculiar facts of the case, the pension of those personnel who had resigned prior to the circular dated 27.12.1995 and had been granted pension for special reasons, shall not be stopped. Since, as per the respondents, the petitioner was not covered under this exception carved out in ***Raj Kumar (supra)***, his pension was discontinued by them by relying on the decision in ***Rakesh Kumar (supra)***. Being aggrieved, the petitioner submitted a representation to the respondent on 01.11.2021, which came to be rejected vide the impugned order dated 23.11.2021. It is in these circumstances that



the petitioner has approached this Court by way of the present petition.

6. Learned counsel for the petitioner submits that the action of the respondents in stopping the pension of the petitioner, who resigned much prior to 27.12.1995, is illegal. He contends that though in **Rakesh Kumar (supra)** the Apex Court had declared that force personnel, who had resigned under Rule 19 of the BSF Rules without completing the qualifying service were not entitled to receive pension in terms of circular dated 27.12.1995, however in its subsequent decision in **Raj Kumar (supra)**, it clarified category of those personnel whose pension were to continue. Consequently, it was directed that pension of those personnel who had resigned prior to the issuance of the circular dated 27.12.1995 without completing the qualifying period of service and were granted pension for special reasons ought not to be stopped. He, therefore, contends that since the petitioner had resigned much prior to 27.12.1995, he would fall in the exception category as laid in **Raj Kumar (supra)** and his pension could not have been stopped.

7. On the other hand, learned counsel for the respondents, who appears on advance notice, opposes the petition. He submits that the petitioner was admittedly entitled to pension only on the basis of the circular dated 27.12.1995 as no pension was sanctioned to him at the time of his discharge. He would, therefore, not be covered in the exception carved out by the Apex Court in **Raj Kumar (supra)**. Furthermore, the petitioner has approached this Court after an inordinate delay and therefore, the writ petition ought to be dismissed on the ground of delay and laches itself.

8. Having considered the submissions of the parties and perused the record, we find absolutely no merit in the writ petition. From the admitted factual matrix, it is evident that the petitioner had sought voluntary



discharge after 11 years of service and that too being well aware that he would not be entitled to any pension, which was admittedly not sanctioned to him till May, 1997. The petitioner on 05.05.1997 was sanctioned pension only on the basis of the respondents' circular dated 27.12.1995 under which pension was allowed to those employees/officers, who were seeking voluntary discharge under Rule 19 of the BSF Rules after 10 years of service. Once it emerged that this circular issued by the respondents and the consequent practice of sanctioning pension to employees who had not put in the qualifying period of service, was based on a misinterpretation of Rule 19 and 49 of the CCS (Pension) Rules, the matter was carried till the Apex Court. In **Rakesh Kumar** (supra), the Apex Court clarified that under the circular dated 27.12.1995 no pension could be granted to such personnel, who had without rendering service for 20 years sought voluntary discharge after 10 years. The pension of the petitioner, which was sanctioned only on the basis of this circular, was rightly stopped.

9. We have also considered the Apex Court's decision dated 04.01.2006 in **Raj Kumar & Ors.** (supra), relied upon by the petitioner, wherein it was directed that those personnel who were for special reasons being granted even prior to 27.12.1995 would not be stopped and find that same does not, in any manner, support his case. Since people who were discharged between 1997-1999 it is an admitted position that the petitioner was sanctioned pension only in 1997 and not at the time of his discharge from service in 1982, when he had completed only 11 years of service as against the 20 years qualifying period prescribed under the CCS (Pension) Rules. In our view, once the petitioner was not receiving any pension from the date of his discharge in 1982 till the issuance of the order dated 05.05.1997, it is clear



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that he does not fall in the exception carved out by the Apex Court in ***Raj Kumar (supra)***. We, therefore, find no merit in the petitioner's plea that he is entitled to receive pension despite not having served for 20 years, which continues to be the qualifying period for pension. There is, therefore, no infirmity in the respondents' order dated 23.11.2021, rejecting his claim for pension.

10. For the aforesaid reasons, the writ petition, being meritless, is accordingly dismissed.

**REKHA PALLI, J.**

**SHALINDER KAUR, J.**

**JULY 09, 2024/ss**

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