



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

% Date of decision: January 31, 2024

+ W.P.(C) 13448/2019

(16) SURESH SHANKAR RANADE Petitioner
Through: Dr. S. S. Hooda and Ms. Rashmi
Rawat, Advs.

versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. T. P. Singh, Sr. Central Govt.
Counsel for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

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

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- (a) Issue a writ, order or direction in the nature of Mandamus thereby directing the Respondent No. 2 to extend the retirement age of the Petitioner by 7 months 5 days i.e. upto 05.05.1995 which is the actual date of retirement from service when the Petitioner was asked to hand over the charge and retire; for which provision exists under Rule 9 (b) of BSF Rules 1978; and/or*
- (b) Issue a writ, order or direction in the nature of Mandamus thereby directing the Respondent No. 2 to grant the Petitioner all the consequential benefits accrued by him till his service upto 05.05.1995, including the correct fixation of the pension and DCRG amount; and/or*



(c) Any further/other order this Hon'ble Court may deem fit in the facts and circumstances of the present case, to include cost of the Court case."

2. The claim of the petitioner is for a direction to the respondent No.2 to extend his retirement age by 7 months and 5 days up to May 05, 1995 when the petitioner was asked to hand over the charge and retire.

3. The facts as noted from the petition and so contended by Dr. S.S. Hooda, learned counsel for the petitioner are that, in 1993 the petitioner was serving in Border Security Force ('BSF', for short) in the rank of Commandant (Selection Grade) having been promoted from the rank of Commandant when the BSF proposed to retire him at the age of 55 years on September 30, 1994, which was the age of superannuation of officers up to the rank of Commandant.

4. Suffice to state, the petitioner filed the writ petition being W.P.(C) 5042/1993 *inter alia* contending that he held the rank of Commandant (Selection Grade) which is higher than the rank of Commandant. Therefore, he is entitled to serve BSF up to the age of 58 years, i.e., September 30, 1997. This Court had allowed the writ petition vide Judgment dated August 25, 1994. Therefore, the petitioner continued in service in the rank of Commandant (Selection Grade) beyond the age of 55 years. The respondent (s) herein challenged the Judgment of this Court dated August 25, 1994 before the Supreme Court in **Civil Appeal No. 5110/1995**, titled as **Union of India and Anr. v. S.S. Ranade**, wherein the Supreme Court vide its judgment dated April 25, 1995 allowed the Appeal and set aside the Judgment of this Court. The operative part of the Judgment reads as under:



'In the premises, for the reasons which we have set out above a Commandant (Selection Grade) does not get the benefit of a higher age of retirement under Rule 9. The appeal is allowed. The judgment and order of the High Court dated 25-08-1994 is set aside. The appellants are entitled to retire the respondent on his completing the age of 55 years. The appellants, however, shall not recover from the respondent any emoluments received by him during his continuance beyond the age of 55 years as a result of any orders of this Court or the Delhi High Court. There will be no order as to costs. Appeal allowed.'

5. According to Dr. Hooda, the direction of the Supreme Court was to respondent No.2 that it had the liberty to retire the petitioner at the age of 55 years, i.e., on September 30, 1994, but with no specific instruction / direction to do so. He submits that the petitioner, in fact, had continued to work in the BSF till May 05, 1995, i.e., 7 months & 5 days beyond the age of 55 years. It means that the petitioner had actually retired on May 05, 1995 and in terms of Rule 9 of the BSF (Seniority, Promotion and Superannuation of Officers) Rules, 1978, the age of superannuation has no bearing insofar as the payment of pension in terms of CCS (Pension) Rules, which governs the calculation of pension to all BSF employees including the petitioner. He states that the pension is nothing but a deferred wage and any length of service physically put in by an employee has to be counted towards pension unless an extended service is illegal in nature. He concedes to the fact that the petitioner's pension for the period October 01, 1994 to May 05, 1995 has been erroneously paid by the respondent No.2 and the same has also been recovered at the instance of the petitioner himself.



6. We are unable to accept the plea of Dr. Hooda in view of the clear mandate of the Supreme Court which we have already reproduced in paragraph 4 above. The Supreme Court has clearly held that the respondent (s) are entitled to retire the petitioner on his completing the age of 55 years. It follows that retirement age of the petitioner was 55 years and it was because of the pendency of the litigation and the fact that this Court had allowed the petitioner to continue to work beyond the age of 55 years the petitioner had worked till May 05, 1995, which he was otherwise not entitled to under the Rules.

7. In any case, the issue as to whether the petitioner holding the post of Commandant (Selection Grade) should have continued till the age of 58 years, as contended by Dr. Hooda has attained finality with the decision of the Supreme Court, wherein it has been categorically held that the age of retirement is 55 years only. Thus, any service put in by the petitioner beyond 55 years of age was not mandated under the Rules and as such, the pension needs to be calculated from the actual date of retirement, i.e., the date when petitioner had attained the age of superannuation of 55 years and not thereafter.

8. The plea of Dr. Hooda that the pension is nothing but a deferred wage is not disputed, but the fact remains that the pension as deferred wage is liable to be paid from October 01, 1994, i.e., after the petitioner attained the age of superannuation on September 30, 1994. As stated by Dr. Hooda, though the petitioner had drawn pension during the period, September 30, 1994 till May 05, 1995, the same was directed to be recovered from the petitioner itself a ground to reject the petition.



9. As far as the plea of Dr. Hooda that the rules governing the age of retirement and pension shall have no connection as the petitioner has worked till May 05, 1995 and accordingly his pension has to be fixed from that date, is concerned, the same is a misconceived argument. In view of the clear decision of the Supreme Court that the retirement age of the petitioner is 55 years, it must follow that the pension of the petitioner needs to be fixed on his attaining the age of superannuation. Dr. Hooda has relied upon the following judgments in support of his contentions:

1. *Ramachandran Nair v. Union of India, 1996 (3) L.L.N. 331*
2. *Lt. Col. B.R. Malhotra v. Union of India and Ors., 1997 SCC OnLine Del 875*

10. The judgments have no applicability to the issue which arises for consideration in this petition and as such are distinguishable.

11. In view of our discussion above, we do not see any merit in the petition. Same is dismissed. No cost.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 31, 2024/jg