

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

Reserved on: 23.09.2025

Date of pronouncement: 29.11.2025

Date of uploading : 29.11.2025

- | | | |
|----|--|-----------------|
| 1. | LPA No. 525 of 2017 (O&M) | |
| | Union of India and others | ... Appellants |
| | Vikas Abrol | ... Respondent |
| | Versus | |
| 2. | CWP No. 20332 of 2022 (O&M) | |
| | Vikas Abrol | ... Petitioner |
| | Union of India and others | ... Respondents |
| | Versus | |
| 3. | COCP No. 1462 of 2017 (O&M) | |
| | Vikas Abrol | ... Petitioner |
| | K. K. Sharma and others | ... Respondents |
| | Versus | |

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

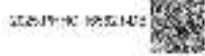
Present Mrs. Anita Balyan, Senior Panel Counsel with
Deputy Commandant- Mr. Arvind Sharma for Union of India.

Mr. Rana Gurtej Singh, Advocate, for the respondent
In LPA No. 525 of 2017 and for the petitioner
In CWP No. 20332 of 2022 and COCP No. 1462 of 2017.

ASHWANI KUMAR MISHRA, J.

These three cases are heard together and are disposed of by this common judgment. Facts are primarily extracted from LPA No. 525 of 2017.

2. The Letters Patent Appeal has been filed by the Union of India assailing the judgment of learned Single Judge dated 20.09.2016 passed in CWP No. 7124 of 2015, whereby the order impugned in the writ dated



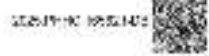
18.03.2015 is set aside and a direction is issued to reconsider the grievance of the respondent/petitioner for grant of pro-rata pension for the services rendered by him in Border Security Force from 04.02.2002 to 14.02.2014.

2. **CWP No. 20332 of 2022** has been filed by the petitioner for quashing the order dated 02.08.2021, whereby his claim for counting of past service rendered in the Border Security Force has been rejected.

3. **COCP No. 1462 of 2017** has been filed by the petitioner for initiating contempt proceedings against the BSF authorities for deliberately not complying with the directions issued by the learned Single Judge in CWP No. 7124 of 2015, whereby his claim for grant of pro-rata pension has allegedly been allowed.

3. Admitted facts of the case are that the respondent/petitioner was appointed in Border Security Force on 04.02.2002 as Sub-Inspector. In the year 2005 the petitioner joined Special Protection Group (hereinafter to be referred as “SPG”) under Cabinet Secretariat, New Delhi, on deputation. In the year 2007, the respondent/petitioner was promoted to the rank of Inspector. While working on deputation in SPG, the respondent/petitioner applied for employment in the Punjab State Police Department. The application for employment was moved through proper channel and no-objection certificate was issued to the petitioner to apply for the post of Inspector as well as for the post of Deputy Superintendent of Police in the State of Punjab.

4. The writ petitioner came to be selected as Inspector in the Punjab Police Department. On his selection, the writ petitioner submitted his resignation annexing the offer of appointment issued by the State of Punjab,



Police Department as also the copy of no-objection certificate dated 07.02.2014 issued by the authorities of Border Security Force. The application for resignation along with connected papers was processed on 12.02.2014 and he was permitted to resign from the Border Security Force so as to allow him to join as Inspector in the Punjab Police Department on 14.02.2014.

5. The Directorate General of Border Security Force vide order dated 14.02.2014, while accepting the resignation tendered by the respondent/petitioner, invoked its authority under Rule 19(1) of the BSF Rules, 1969 read with Rule 26(1) of the Central Civil Services (Pension) Rules, 1972 and held that acceptance of resignation was without any financial/pensionary benefits. It is this part of the order with which the writ petitioner was primarily aggrieved. The order dated 14.02.2014 is reproduced hereunder:-

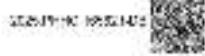
*“DIRECTORATE GENERAL BORDER SECURITY FORCE
(AIRWING)*

ORDER

As approved by the Competent Authority, resignation tendered by No.020010713 Insp. (GD) Vikas Abrol who is posted to BSF Air Wing from 28 Bn. BSF is hereby accepted with immediate effect, under the provisions of Rule 19(1) of BSF Rules 1969, read with Rule 26 (1) of CCS (Pension) Rules 1972 (hereinafter to be referred as ‘the Rules of 1972’), without any financial/ pensionary benefits.

2. The above SO is hereby struck off from the strength of BSF Air Wing with immediate effect.”

6. It transpires that the writ petitioner submitted various representations claiming grant of pro-rata pension and service benefits of his



past working with the Border Security Force relying upon Rule 26(2) of the Rules of 1972 as also the office memorandum dated 26.07.2025. Rule 37 was also relied upon by the writ petitioner to claim pro-rata pension by claiming parity with the Central Government employees who were absorbed in the employment of the Government Corporation. Such representations of the respondent ultimately came to be rejected vide order dated 18.03.2015. In this order, the authorities of the BSF reiterated their earlier stand. The authorities also observed that under the Rules of 1972, the qualifying service for pension is 20 years except in case of invalidation or compulsory retirement/superannuation retirement, which is not the case here.

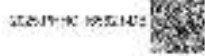
7. Aggrieved by the order dated 18.03.2015, the petitioner filed CWP No. 7124 of 2015 – which has since been allowed by the learned Single Judge vide order dated 20.09.2016. The reason assigned for interfering with the order dated 18.03.2015 by the learned Single Judge is contained in para 5 and 6 of the judgment, which is reproduced hereunder:-

“5.) The respondents' contention is that petitioner's taking up another appointment in a State service was at his own interest and not in public interest. Therefore, the service rendered in BSF cannot be counted for the purpose of grant of pro rata pension. Perusal of Rule 26 (1) and (2) of the 1972 Rules, it is evident that petitioner's case would fall under Rule 26 (2). Rule 26 (1) and (2) read as under:-

“26. FORFEITURE OF SERVICE ON RESIGNATION

(1) Resignation from 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

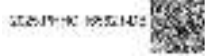


permanent, under the Government where service qualifies.”

6.) Reading of Rule 26(2) of the 1972 Rules, it is clear that petitioner's case would fall under Rule 26 (2) for the reasons rightly or wrongly, the respondents have entertained the petitioner's application for taking up another appointment, namely, Police Inspector in the Punjab Police Service in the State of Punjab. Even the resignation has been accepted by the respondents. The respondents now cannot contend that petitioner's request for taking up another appointment in State of Punjab service is not in accordance with law and further to contend that in between issuance of No Objection Certificate and acceptance of resignation, he was facing inquiry. It is to be noted that the respondents had full power to withhold or reject resignation if the inquiry is pending and further if the request of the petitioner's application through proper channel to take up another appointment in Punjab State Civil service also could have been withheld or they could have informed the Punjab State Police service that petitioner's application for the post of Inspector in Punjab Police service is not in accordance with the Rules and to stall appointment of petitioner as Police Inspector. For not taking timely action by the respondents and in view of the latter development that petitioner's resignation was accepted and he is discharging the duties of the post of Inspector in the Punjab State Police service, the respondents cannot deny the pro-rata pension under Rule 26 (2) of the 1972 Rules read with Official Memorandum dated 26.7.2005 (Annexure P-32) for which the petitioner is entitled to pro-rata pension for the service rendered in the BSF. The petitioner has rendered 12 years of service in BSF. The same cannot be denied to him for the purpose of extending monetary benefits. In view of the above facts and circumstances, Annexure P-30 dated 18.3.2015 is liable to be set aside.”

8. The appeal by the Union of India is pressed with reference to the applicable provisions contained in the Rules of 1972 as well as the office memorandum dated 26.07.2005, to contend that the relief claimed and allowed in favour of the petitioner is not covered by it.

9. Per contra, learned counsel for the respondent/writ petitioner places reliance upon the judgment of Hon'ble the Supreme Court in

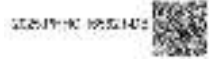


Praduman Kumar Jain vs Union of India 1994 (Supp) SCC 548, Division Bench judgment of Patna High Court in Civil Writ Jurisdiction Case No. 16009 of 2013 – **Dharmendra Kumar Mishra vs The Union of India and another** decided on 24.07.2025 and Division Bench judgment of Delhi High Court in Writ Petition (C) No. 293 of 2013 – **Satendra Kumar Gupta vs Union of India and others** decided on 17.04.2013, to submit that the benefit granted by learned Single Judge is as per law and requires no interference.

10. In the context of admitted facts of the present case, we are, therefore, required to consider as to whether the claim of the writ petitioner would be covered by Rule 26(2) of the Rules of 1972 for the purposes of grant of pro-rata pension or not?

11. Rule 26 of the Rules of 1972 has already been extracted by the learned Single Judge. It is in two parts. Sub-rule (1) of Rule 26 of the Rules of 1972 provides that resignation from service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. It is undisputed that the respondent/petitioner has submitted resignation from his earlier post of Inspector in BSF. It is also undisputed that the writ petitioner has not been allowed to withdraw his resignation in public interest. Rule 26(1) of the Rules of 1972, when applied on the facts of this case would indicate forfeiture of past service of the writ petitioner.

12. The claim of the writ petitioner is based upon Sub-rule (2) of the Rules of 1972 which provides that a resignation shall not entail forfeiture of past service if it is submitted to take up, with proper permission, another



appointment, whether temporary or permanent, under the Government where service qualifies.

13. The writ petitioner has taken up another appointment with proper permission. What has, thus, to be seen is as to whether his claim is covered by Sub-rule (2) of Rule 26.

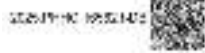
14. Sub-rule (2) of Rule 26 contemplates taking up of another appointment under the Government where service qualifies. 'The Government' has been defined under Rule 3(1)(i) of the Rules of 1972 to mean the Central Government. Therefore, Sub-rule (2) would be attracted where the employee takes up another appointment under the Government i.e. Central Government.

15. Once the Government is specifically defined in the Rules of 1972, taking up of another appointment has to be necessarily with the appropriate government i.e. Central Government. This, however, is not the case here. The respondent/ petitioner has taken up another appointment with the State of Punjab. Sub-rule (2) of Rule 26 does not contemplate taking up of another appointment by the employee covered under the Rules of 1972 with another State i.e. State of Punjab.

16. The petitioner has, however, placed reliance upon Government memorandum dated 26.07.2005 to buttress his grievance. The relevant portion of the memorandum is extracted as under:-

*"No. 28/30/2004-P&PW(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Pension & Pensioners Welfare*

*3rd Floor Lok Nayak Bhavan,
New Delhi-110 003, the 26th July 2005*



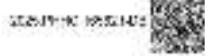
OFFICE MEMORANDUM

Subject:- Counting of past service on submission of technical resignation on or after 1-1-2004 by employees governed by Central Civil Services (Pension) Rules, 1972.

The various Ministries / Departments/ Autonomous bodies have been seeking clarifications from this Department whether the employees appointed on or before 31-12-2003, who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972, will be eligible for counting of their past service under Rule 26(2) of the said rules or under the provisions of the DP&AR's O.M. No.28/10/84-PU dated 29-8-1984, as amended from time to time, in the situation where such employees submit technical resignation, on or after 1-1-2004 to take up new appointment in the new Ministry/ Department/ Central Autonomous Body.

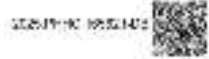
2. The matter has been considered in consultation with the Ministry of Finance and it is clarified as follow:

- (i) All the employees who entered into Central Government service or in the service of an Autonomous Body set up by Central Government (satisfying the conditions laid down in para-4 of O.M. dated 29-8-1984), on or before 31-12-2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972, will continue to be governed by the same pension scheme and same rules, for the purpose of counting of their past service under the said rules or under the provisions of the DP&AR's O.M. No. 28/10.84-PU dated 29-8-1984, as amended from time to time, if such employees submit technical resignation on or after 1-1-2004, to take up new appointment in another Ministry or Department of the Government of India or an Autonomous Body set up by the Central*



Government, in which the pension scheme under Central Civil Services (Pension) Rules, 1972 already exists for the employees who entered into service on or before 31-12-2003.

- (ii) *The employees who entered into service on or before 31-12-2003 and who were governed by CPF scheme or any pension scheme of Central or State Government, other than the pension scheme under Central Civil Services (Pension) Rules, 1972, on submission of technical resignation to take up new appointment on or after 1-1-2004, cannot be allowed to join the old pension scheme under Central Civil Services (Pension) Rules, 1972 because entry to the said scheme ceased w.e.f. 31-12-2003 and no new entry can be allowed in the pension scheme under above Rules. However, such employees can seek pensionary/terminal benefits, from the previous organization/Department, if admissible under the rules of that organization/Department, for the period of services rendered under that organization/Department.*
- (iii) *All the Central Government employees who entered Central Government service or the service of an Autonomous Body set up by Central Government, on or before 31-12-2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972 and who submit technical resignation on or after 1-1-2004, to take up new appointment under State Government; will be eligible for grant of pro-rata pensionary benefits for the period of Central Government or Central Autonomous Body service, on the lines as provided in the Rule 37 of Central Civil Services (Pension) Rules, 1972 and related orders.”*

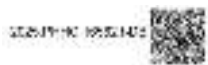


The office memorandum, aforesaid, extends to two different exigencies. The first exigency is where the employee is governed by the Old Pension Scheme under the Rules of 1972 and takes up new appointment in another Ministry or Department of Central Government or an autonomous body set up by the Central Government in which the pension scheme under the Rules of 1972 already exists or the employees entered into service on or before 31st December 2003. This clause is not attracted in the facts of the present case.

17. Clause (ii) of the Memorandum dated 26.07.2005 relates to an employee covered by the Rules of 1972 who submits technical resignation to take up new appointment on or before 01.01.2004 but was not allowed to join on or before 01.01.2004. In such case the employee is entitled to pensionary /terminal benefits from the previous organization/ department. This clause is also not attracted to the facts of the present case.

18. So far as Clause (iii) of the Memorandum dated 26.07.2005 is concerned, it relates to a Central Government employee entering into services on or before 31st December 2003 and is covered by the Rules of 1972 to submit technical resignation on or before 01.01.2004 to take up a new appointment under the State Government, wherein he will be eligible for grant of pro-rata pensionary benefit for the period of service in Central Government or Central Autonomous body on the lines as provided in Rule 37 of the Rules of 1972 and related order.

19. In order to appreciate the applicability of Clause (iii) of the Memorandum dated 26.07.2005, we shall have to refer to Rule 37 of the Rules of 1972 also, which reads as under:-



“37. Pension on absorption in or under a corporation, company or body

(1) A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him].

EXPLANATION. - Date of absorption shall be –

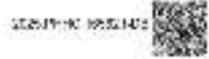
(i)	in case a Government employee joins a corporation or company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body;
(ii)	in case a Government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government, the date from which his unqualified resignation is accepted by the Government.

(2) The provisions of sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Government and State Governments/Union Territory Administrations or under the joint control of two or more State Governments/Union Territory Administrations.

(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

EXPLANATION. - Body means autonomous body or statutory body.”

Rule 37 of the Rules of 1972 talks about pension on absorption in or under the Corporation, company or body. The absorption of Government servant

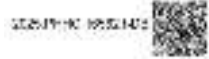


for the purposes of Rule 37 of the Rules of 1972, has to be in service or post under a Corporation or a company wholly or substantially or controlled by the Central Government or a State Government, subject to Sub-rule 3, which talks of applicability of a pension scheme in a body controlled or financed by the Central Government.

20. A co-joint reading of Clause III of the memorandum dated 26.07.2005 read with Rule 37 of the Rules of 1972 would make it explicit that the technical resignation for the Central Government employee would be covered if he is covered by the Old Pension Scheme and has submitted technical resignation on or before 01.01.2004. The technical resignation of the writ petitioner, herein, is of the year 2014, which is after 01.01.2004. Neither the office memorandum dated 26.07.2005 is under challenge nor the office memorandum is otherwise made applicable, on facts, as such clause 3(iii) will also not be attracted in the facts of this case.

21. We have perused the judgment of learned Single Judge which does not refer to the applicability of relevant Rules in the facts of the present case. Neither the learned Single Judge has referred to the ingredients of Rule 26(2) of the Rules of 1972, as noticed above, nor the office memorandum has been carefully perused and applied to the facts of the case. We are, therefore, of the considered opinion that learned Single Judge has erred in granting benefit of Rule 26 (2) of the Rules of 1972 to the claim of the respondent/ writ petitioner.

22. We have perused the judgments relied upon by learned counsel for the respondent/ petitioner in the cases of **Praduman Kumar Jain**'s case (supra), **Dharmendra Kumar Mishra**'s case (supra) and **Satendra Kumar**

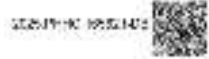


Gupta's case (supra). We with utmost respect find ourselves unable to subscribe to the reasoning furnished therein. The matter before the Patna High Court arose out of a rejection of a claim of pension by the Central Administrative Tribunal. The attention of the Division Bench was not invited to the definition of 'Government' occurring in Rule 3(1)(i) which means the Central Government only. Taking up another employment could only be with the Central Government. This aspect has escaped the attention of the Court in Dharmendra Kumar Mishra's case (supra).

23. The other judgment relied upon by learned Counsel for the respondent/ petitioner of Delhi High Court places reliance upon a previous judgment in Writ Petition No. 6447 of 2011 – Shashi Kant Singh vs UOI and others, which relates to delayed acceptance of technical resignation. We have perused the judgment in Satendra Kumar Gupta's case (supra) wherein also the definition of Government has not been noticed. We, therefore, are not persuaded to subscribe to the view delivered by the Patna High Court Dharmendra Kumar Mishra's case (supra) and Delhi High Court in Satendra Kumar Gupta's case (supra).

24. The judgment of Hon'ble the Supreme Court in Praduman Kumar Jain's case (supra) is in the context of computation of qualifying service and does not deal with the controversy which has arisen for consideration before us.

25. In the facts of the case, we draw strength for the view taken by us from the judgment of Hon'ble Supreme Court in Union of India vs Rakesh Kumar (2001) 4 SCC 309. In this judgment the Supreme Court was dealing with a case of resignation before completion of qualifying

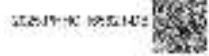


pensionable service. In para 15, the Court specifically excluded the applicability of the Rule on those who quit the service after tendering resignation. In para 21 the Supreme Court observed as under:-

“21. In the result, there is no substance in the contention of the learned counsel for the 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.”

26. Having examined the claim of the respondent/ petitioner in the context of applicability of statutory provisions, we are of the considered view that the benefit of pro-rata pension would not be admissible to him and the contrary view taken by the learned Single Judge cannot be sustained in view of the specific provisions of the Rules. Consequently, the present appeal succeeds. The judgment of learned Single Judge is set aside. The writ petition (CWP No.7124 of 2015) of the petitioner is dismissed with no order as to costs.

27. With regard to the petitioner's claim in CWP No. 20332 of 2022 for counting his past service served in the Border Security Force, we have examined the matter and find no continuity of service between his



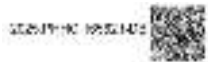
employment under the Central Government and his subsequent employment under the State Government. This is because the petitioner accepted a fresh appointment with the State of Punjab. Sub-rule (2) of Rule 26 does not envisage a situation where a Central Government employee governed by the 1972 Rules assumes a new appointment under another State Government, such as the State of Punjab, as noted above. In the absence of such continuity, the petitioner is not entitled to have his past service counted for any consequential benefits.

28. Additionally, it is a case of change of employer and the contract of one employer cannot be extended to other employer unless there is an agreement between the two employers. There is no such mutual understanding between the two employers and the Rules do not provide so to facilitate the employee with such benefits as has been demanded by the petitioner in the present cases.

29. Furthermore, in the appointment letter of the petitioner dated 15.11.2013 (attached with CWP No. 20332 of 2022) offered by the State of Punjab in para 8 of the appointment letter he has been given fresh appointment. Para 8 thereof is extracted below:-

“Your seniority in the Punjab Police shall be fixed under the relevant Rules, Orders and instructions. Since this is a fresh appointment in the Punjab Police after your resignation/retirement from previous government service under the Central Govt./ MHA, your past service in the Central Armed Police Forces (CAPFs) or the SPG will not be counted for seniority or pension purposes.”

Since, it has been categorically mentioned in the appointment letter of the petitioner issued by the Punjab Police Department that he has been issued a



fresh appointment in the Punjab Police after his resignation/ retirement from previous government under the Central Government/ MHA, his past service in the Central Armed Police Forces or the SPG will not be counted for seniority or pension purposes, no case for counting of his past service in Border Security Force is made out. Accordingly, **CWP No. 20332 of 2022** filed by the petitioner is also dismissed.

30. So far as **COCP No. 1462 of 2017** is concerned, since the appeal filed by Union of India has been allowed by this Court for the reasons mentioned in the above paragraphs, thereby dismissing the writ petition, the present contempt petition has been rendered infructuous and dismissed accordingly.

31. Pending miscellaneous application (s), if any, also stands disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

29.11.2025
vs

(ROHIT KAPOOR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No