

(2025) 01 RAJ CK 1670
In the Rajasthan High Court, Jaipur Bench
Case No : Civil Writ Petition No. 2860 Of 2012

Const. Ash Karan Geel

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 29-01-2025

Acts Referred:

Rajasthan Minor Mineral Concession Rules, 2017 — Rule 16, 17, 36, 36(5), 44

Citation : (2025) 01 RAJ CK 1670

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Anurag Sharma

Final Decision : Dismissed

Judgement

Arun Monga, J

1. The petitioner herein, inter alia, seeks quashing of an order dated 13.02.2012, vide which the benefits of past service was not considered in terms of Rule 26(6) of CCS (Pension) Rules, 1972 as this was the case of re-enlistment and not of allowing withdrawal of resignation. He also seeks directions to the respondents to count his past service for all purposes as per Rule 26 of the Rules with all consequential benefits i.e. seniority, pay fixation, promotion etc.

2. Relevant facts for the purpose of adjudication are that the petitioner was initially appointed to the post of Constable in BSF on dated 01.04.1987. In the year 1991, while serving at 183 Battalion of BSF, he was faced with peculiar physical problem/mental depression and submitted his resignation from service. The same was accepted immediately by his Commandant vide letter dated 31.01.1991.

2.1. The petitioner became normal after some time in the month of April 1991. He realised that he gave the resignation under abnormal state of affairs and in fact he never wanted discharge from service at such a young age. He made a request in the month of April 1991, to the competent authority for withdrawal of

the resignation as a result of material change in the circumstances which originally compelled him to tender the resignation. However, he was asked to submit a written application in this respect, somewhere in the last week of May 1991.

2.2. The petitioner fulfilled the requisite norms for withdrawal of his resignation and the respondent No.2 was pleased to approve his re-enlistment as Constable vide letter dated 04.06.1991. The petitioner joined back in the service. He was not Imparted any fresh training before joining back. In other words, he was re-enlisted on the basis of earlier training.

2.3. The petitioner has been continued in service on the basis of Training undergone by him prior to the episode of resignation. However, his previous service is not being counted for service benefits. Hence, this petition.

3. Stand taken by the respondents in the reply is that as far as health problem of the petitioner is concerned, no such material is available in service record of the petitioner before proceeding on resignation. The petitioner did not submit any request with regard to withdrawal of his resignation to the Commandant 183 Bn BSF. However, after a gap of nearly four months, the petitioner approached DG BSF for his re-enlistment on compassionate ground.

3.1. The request of the petitioner with regard to re-enlistment was accepted by Force Headquarter BSF, new Delhi vide letter dated 04.06.1991 without benefit of his past service on compassionate ground subject to detailed verification of his character and antecedents as per instructions. In compliance of Director General BSF, order referred above, Frontier HQ BSF Jammu issued his re-enlistment order without benefits of his past service and adjusted / posted to 78 Bn BSF vide order dated 18.06.1991.

4. In the aforesaid backdrop, I have heard learned counsel for the parties and perused the case file.

5. Learned counsel for the petitioner argues that petitioner was permitted to withdraw his resignation by putting conditions which are contrary to the rules in force. He has been made to suffer a recurring loss inasmuch as he has not been granted the due increments for the previous service rendered by him. The same would also affect his retiral benefits since his previous service would not be counted towards qualifying service. The same is contrary to the mandate of applicable rules. It is fairly settled that there can be no estoppel against statute and such adhesive terms cannot be imposed on an employee. These are rather void ab initio, he contends.

6. First and foremost, reference may be had to the reinduction of the petitioner in service after his resignation was accepted vide office order dated 04.06.1991 (Annexure-3), relevant of which, reads as under:-

"I am directed to convey the approval of Competent Authority for re-enlistment of Ex-Constable Askaran, No.87121770 of 183 B. BSF in service without benefit

of his past service on compassionate grounds subject to detailed verification of his character and antecedents as per instructions issued from this Directorate.

2. Formal re-enlistment orders of above Ex-Constable may issued at your end under intimation to this Directorate.

3. The Competent Authority is further pleased to place his services at your disposal for adjusting him in any one of the BSF units under command. His service record may be obtained from 183 B. BSF."

7. A perusal of the above leaves no manner of doubt that it is not a case of petitioner's resignation having been either withdrawn or not accepted or treating it as withdrawn, but a clear cut case of petitioner having chosen to resign and remaining out of service for as many as four years and thereafter having had a change of mind he had applied again to be taken back by way of re-enlistment. Perhaps the competent authority took a lenient view and in that context re-enlisted the petitioner in service. Thereafter, the petitioner rendered full length of service and has superannuated and has been given all the pensionary / retiral benefits.

8. Rule 26 of CCS (Pension) Rules, 1972 regulates his service conditions relating resignation and counting of his previous service. Besides fulfilling the various conditions mentioned therein it has been envisaged that when an order is passed by the Appointing Authority allowing 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. In the context of re-enlistment, reference may now be had to Rule 26, which reads as under:-

"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) 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.

(4) 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 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 is allowed to resume duty as a result of 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.

(5) 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 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.

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

(7) A resignation submitted for the purpose of Rule 37 shall not mail forfeiture of past service under the Government."

(emphasis supplied)

9. While on the one hand, learned counsel for the petitioner relies on Sub-rule (6), on the other hand, learned counsel for the respondents referred to Sub-rule (1), *ibid*.

10. Having read the entire rule in entirety, I am in agreement with the learned counsel for the respondents that what is applicable in the present case is Sub-rule (1) and not (6).

11. As already noted hereinabove, Sub-rule (6) would have been in such a situation where either the petitioner's change of mind would have been accepted by treating his resignation as withdrawn or his resignation would not have been accepted. Being non of the aforesaid situation, I see no reason why the benefit of Sub-rule (6) be given to the petitioner. Reliance placed on the same by learned counsel for the petitioner is, therefore, completely misplaced.

12. Moreover, in this context, reference may be had to a judgment rendered by Delhi High Court in *Sub Inspector O. Verghese Vs. Union of India & Ors.* : 2002 (62) DRJ 143. Relevant extract is as below:-

"6. It is an admitted position that the members of the B.S.F. are governed by the CCS (Pension) Rules. Rule 26 thereof provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the Government where service qualifies. In the present case, the petitioner resigned from service not to take up any other appointment but to sort out some of his personal/domestic problems. Therefore, on the facts and circumstances of the present case and in the light of the records available, the only irresistible conclusion that can be derived therefrom is that upon acceptance of the resignation of the petitioner, there was forfeiture of his past service, in terms of provisions of Rule 26 of CCS (Pension) Rules. It was also not a case of withdrawal of resignation in which case the provisions of sub-rule (4) of Rule 26 would have been applicable. It was a case of fresh enlistment of the petitioner without benefit of the past service and, there-fore, Rule 26 (4) shall have no application to the case in hand, which was also an admitted position of the parties, as stated in the course of arguments. In my considered opinion, reliance on the decision of the Supreme Court in *Union of India v. Rakesh Kumar* (supra) is appropriate and the ratio of the said decision is squarely applicable to the facts of the present case as the said decision was rendered by the Supreme Court after noticing the provisions of Section 8 and Rule 19 of the BSF Act and Rules and also the provisions of Rule 26 of its CCS (Pension) Rules. In the said decision, it was held that if the rules are not providing for grant of pensionary benefits, it is for the authority to decide and frame appropriate rules but the 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. It was also held that 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 except in those cases where there are special provisions.

7. In the present case, counsel for the petitioner has fairly submitted during the course of his arguments that he has also not challenged in the writ petition and does not wish to challenge the term of re-enlistment about loss of the benefit of past service, as void and unconscionable. In that view of the matter, the decision of the Supreme Court in *Sushil Kumar Yadunatha Jha* (supra) shall have no application to the facts and circumstances of the present case.

8. I am bound by the recent decision of the Supreme Court rendered in the light of similar provisions, which are also under examination in the present case. Following the said recent decision of the Supreme Court, I hold that the petitioner is not entitled to the benefit of his past service for any purpose, including that of pensionary benefit. The petition has no merit and is dismissed accordingly."

13. I am in respectful agreement with the aforesaid view, apart from my discussion already rendered hereinabove.

14. Accordingly, the writ petition being devoid of any merit deserves no

interference, the same is, therefore, dismissed.

15. Pending application(s), if any, stand(s) dismissed.