

(2018) 03 RAJ CK 0142

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10886, 9006, 4529, 4572, 4573, 4574, 4578, 4608, 4619, 4672, 4673, 4675, 4684 of 2017

Devi Singh @APPELLANT@Hash Union of India

Date of Decision : 07-03-2018

Acts Referred:

Border Security Force Rules, 1969 — Section 19, 19(1)(b)
Central Civil Services (Pension) Rules, 1972 — Rule 49(2)(b)
Central Government Rules — Rule 182
Constitution of India, 1950 — Article 14

Citation : (2018) 03 RAJ CK 0142

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : S.S.Gill, Kshamendra Mathur, Deelip Kawadia, A.K.Rajvanshy, D.P.Dhaka, N.K.Songra, Dhanraj Vaishnav

Final Decision : Dismissed

Judgement

Petition No.,Name of Petitioner,Post,Date of Enrolment,Date of Discharge

9006/16,Trilok Singh,Lance Naik,25/11/1985,31/10/1996

4572/17,Ramji Lal,Constable,8/6/1987,31/12/1997

31/12/1997,Bhagwan Singh,Lance Naik,5/3/1986,31/12/1996

4573/17,Jagaria Ram,Constable,22/9/1987,31/3/1998

4574/17,Kamal Singh,Lance Naik,5/12/1984,31/1/1997

4578/17,Ramesh Kharadi,Lance Naik,11/1/1985,31/1/1997

4608/17,Bharat Lal,Const/Driver,18/5/1987,1/10/1997

4619/17,Ganpat,Lance Naik,5/7/1986,31/5/1997

4672/17,Het Ram,Lance Naik,10/6/1986,31/1/1997

4673/17,Pawan Kumar,Lance Naik,11/8/1986,31/12/1997

4675/17,Narendra Singh,Lance Naik,5/3/1986,31/5/1997

4684/17,Shaitan Singh,Lance Naik,5/3/1985,31/1/1997

10886/17,Devi Singh,Constable,8/2/1988,31/10/2001

was submitted that the petitions are highly belated and have been filed after 20 long years from the date the petitioners were retired, "they were",

offered reemployment, which was not accepted by them and, therefore, the writ petitions deserve to be dismissed on this count alone.",

Submissions were also made that the issue sought to be raised in the present writ petitions is no more res integra inasmuch as the Supreme Court,

judgments in the case of Rakesh Kumar (supra) and Raj Kumar (supra) after taking into consideration the entire gamut of submissions raised from,

time to time, have categorically laid down that persons like petitioners were not entitled to any relief as the cases of petitioners squarely fall within the",

category (B) (ii) as laid down in the case of Raj Kumar (supra). It was further submitted that the Hon'ble Supreme Court in the latest judgment in,

Union of India vs. Madhu E.V. & Anr. : AIR 2012 SC 4806 after taking into consideration both the earlier judgments in the case of Raj Kumar,

(supra) and Rakesh Kumar (supra), has quashed and set aside the judgment of High Court delivered by Single Judge as upheld by the Division Bench,"

reiterated the earlier view and, therefore, the submissions made in this regard cannot be countenanced at all and it was prayed that the writ petitions",

be dismissed.,

Further reliance was placed on the judgment in Karan Singh vs. Union of India : D.B.Civil Special Appeal (Writ) No. 663/2008 decided on 8/1/2018. I,

have considered the submissions made by learned counsel for the parties and have perused the material available on record. A bare look at the table,

indicated hereinbefore clearly shows that all the petitioners other than Devi Singh had retired in the year 1996, 1997 or 1998. It is not denied that they",

were offered reinstatement by the respondents based on the Circular dated 17/10/1998 and that they failed to join back the services. A submission has,

been made that as the offer for reinstatement made was not fair, the petitioners chose not to accept the said offer. Whereafter, though it is claimed",

that several representations were made, seeking relief of grant of pension, the fact that issue in this regard was already raised by similarly situated",

persons and had been decided by Hon'ble Supreme Court in the year 2001

and subsequently in the year 2006, the slumber of the petitioners is not" ,,,, understandable.,,,,

Further, the cause of action has been sought to be revived on account of response given by the respondents to the notice issued by the counsel for the" ,,,, petitioners. The Honbâ??le Supreme Court in State of Uttranchal & Anr. vs. Sri Shiv Charan Singh Bhandari & Ors. : (2013) 12 SCC 179 has,,,, considered the said aspect and has laid down that consideration of representation relating to a stale claim or dead grievance does not give rise to a,,,,

fresh cause of action. Apparently, the petitioners have sought revival of a dead/stale claim on account of response given by the respondents relying on" ,,,, the judgment in the case of Madhukar (supra), which judgment cannot apply irrespective of the circumstance of a given case." ,,,,

As noticed hereinbefore, in the response it is indicated that as many as 2209 BSF personnel proceeded on voluntary retirement out of which only 447" ,,,, personnel were granted pension and whereafter, action was initiated to recall the benefits and offer re-induction, which aspect was challenged in right" ,,,, earnest in the case of Rakesh Kumar (supra), wherein, after a detailed consideration of the Pension Rules and Rule 49(2) (b) as well as factual" ,,,, position/hardship, it was laid down as under:" ,,,,

â??16. On the basis of Rule 49, it has been contended that qualifying service for getting pension would be ten years. In our view, this submission is" ,,,, without any basis. Qualifying service is defined under Rule 3(q) to mean service rendered while on duty or otherwise which shall be taken into,,,, account for the purpose of pensions and gratuities admissible under these Rules. Rule 13 provides that qualifying service by a government servant,,,, commences from the date from which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary,,,, capacity. This Rule nowhere provides that qualifying service for getting pension is 10 years. On the contrary, there is specific provision that if a" ,,,, government servant retires before completing qualifying service of 10 years because of his attaining the age of compulsory retirement, he would not" ,,,, get pension but would get the amount of service gratuity calculated at the rate of half months emoluments for every completed six monthly period of,,,, qualifying service.,,,,

In these appeals, we are not required to consider other conditions prescribed for qualifying service as it is admitted that the respondent- members of" ,,,, the BSF have completed more than 10 years of qualifying service. Further clause (2)(a) of Rule 49 specifically provides for grant of pension if a ,,,, government servant retires after completing qualifying service of not less than 33 years. The amount of pension is to be calculated at fifty per cent of ,,,, average emoluments subject to maximum provided therein. Clause (2)(b) upon which much reliance is placed indicates that in case of a government ,,,, servant retiring in accordance with the provisions of the Rules before completing qualifying service of 33 years, but after completing qualifying service" ,,,, of ten years, the pension shall be proportionate to the amount of pension admissible under clause (2)(a) and in no case, the amount of pension shall be" ,,,, less than Rs.375/- per month. ,,,,

This would only mean that in case where a government servant retires on superannuation i.e. the age of compulsory retirement as per service ,,,, conditions or in accordance with the CCS (Pension) Rules, after completing 10 years of qualifying service, he would get pension which is to be" ,,,, calculated and quantified as provided under clause (2) of Rule 49. This clause would cover cases of retirement under Rules 35 and 36, that is," ,,,, voluntary retirement after 20 years of qualifying service, compulsory retirement after the prescribed age and such other cases as provided under the" ,,,, Rules. However, this has nothing to do with the quitting of service after tendering resignation. It is also to be stated that Rule 26 of the CCS (Pension)" ,,,, Rules specifically 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. Hence, on the basis of Rule 49 a member of BSF who has" ,,,, resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefits. ,,,, There is no other provision in the CCS (Pension) Rules giving such benefit to such government servants. ,,,,

21. 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, the 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 BSF are governed by CCS",,,,,

(Pension) Rules. The 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 writ, 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 can there be any estoppel.,,,,,

Further, in such cases there cannot be any consideration on the ground of hardship. 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. 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.,,,,,

22. 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 the 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 the 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.

The judgment in the case of Rakesh Kumar (supra) was followed in the case of Raj Kumar (supra) and looking to the overall circumstances of the case, the following order was passed:

17. We find that the cases before us can be divided into the following categories:

(A) Pre-circular:

Personnel who resigned and were granted pension for special reasons, even prior to the circular dated 27.12.1995

(B) Post-circular:

Personnel who resigned pursuant to the circular dated 27.12.1995. These persons can be further divided into two sub-categories:-

(i) Personnel who retired in 1996, were sanctioned pension and were therefore asked vide letter dated 31.10.1998 not to report for re-induction. Their

pension has been stopped pursuant to the judgment in Rakesh Kumar. These persons can be further divided into two sub-categories:-

(a) those who are in a position to be re-inducted into service even now, and

(b) those who cannot be re-inducted into the service as a result of being age-barred or due to being medically or physically unfit.

(ii) Those who retired subsequent to 1996, were not sanctioned pension, and were directed to report for re-induction in to service or to forfeit pension

benefits by virtue of the circular dated 17.10.1998 and the individual letters.

18. Having considered the peculiar facts arising in each of these groups, we make the following orders:-

1. The personnel falling in category (B)(ii) i.e. those persons who had retired subsequent to 1996 pursuant to the circular dated 27.10.1995 and had not

been sanctioned pension, but who have been directed to report for re-induction in service shall necessarily have to forfeit their pension, if they have

not reported for service by virtue of the circular dated 17.10.1998. If, however, they have reported for service then there is no question of any relief in

their case.

2. In the case of persons falling in category (B)(i), they shall also be given the

option of re-induction into service, and those falling in category (B)(i)(a)",,,,,

shall be so re-inducted, subject to the conditions stipulated in the circular dated 17.10.1998 and on condition that they shall refund GPF and pension",,,,,

amounts drawn by them till re-induction. The authorities shall indicate the deadline by which such persons shall offer themselves for re-induction.,,,,,

3. In the case of persons who shall fall in category B(i)(b), i.e. persons who had retired in 1996, were sanctioned pension but who cannot be re-",,,,,

inducted today as they are age-barred or physically or medically unfit or for any other reason including their inability to return the amount of GPF,",,,,

pension drawn or other dues, there shall be no question of continuing payment of pension which shall be liable to cease as a result of the decision in",,,,,

Rakesh Kumar. We are however of the view that equity demands that in such cases there shall be no recovery of the pension amounts already paid to,,,,

them.,,,,,

4. In cases which fall under category (A), i.e. personnel who had resigned prior to the circular dated 27.12.1995 and had been granted pension for",,,,,

special reasons and continued to draw it till the stoppage of pension as a result of the judgment in Rakesh Kumar, we think that irrespective of the",,,,,

position in law, equity demands that, as they have drawn their pension for long periods, they shall not be asked to refund their drawn pension amounts,",,,,

nor shall their pension be stopped now.â??,,,,,

Admittedly, the case of the petitioners fall within the category (B) (ii) as indicated in the above case dis-entitling them from any relief. In yet another",,,,,

case of Madhu E.V. (supra), which is the last judgment in the series of similar nature cases, the Honâ??ble Supreme Court again reiterating the",,,,,

principles as laid down in the case of Rakesh Kumar (supra) and Raj Kumar (supra), and again laid down as under:",,,,,

â??12. In view of the decisions of this Court in Union of India & Others Vs. Rakesh Kumar (supra) and Raj Kumar & Others Vs. 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.â??",,,,,

The law laid down in the case of Madhu E.V. (supra) applies on all force to the case of the petitioners and as such the petitioners are not entitled to,,,,,

any relief. The submissions made by the counsel for the petitioners with reference to the various provisions of BSF Rules, Pension Rules and certain",,,,,

circulars as well as orders passed by certain High Courts against which SLP has been dismissed by the Honâ??ble Supreme Court cannot be,,,,,

countenanced in view of the categorical law laid down by Honâ??ble Supreme Court repeatedly in similar nature writ petitions. In case of Devi Singh,,,,,

(SBCW No.10886/17) as the petitioner was discharged after Circular dated 17/10/1998 whereby, the position about entitlement to pension etc. was",,,,,

clarified, the petitioner has no case whatsoever and he cannot even claim parity with other petitioners.",,,,,

So far as the plea regarding delay in filing the writ petitions is concerned, though the law laid down by the Honâ??ble Supreme Court in the case of",,,,,

Sri Shiv Charan Singh Bhandari (supra) also applies to the present cases where the cause is sought to be revived after 20 years only account of,,,,,

response given to the representations made, in view of the fact that the issue even otherwise stands covered by three judgments of Honâ??ble",,,,,

Supreme Court, the submissions made in this regard do not require further

adjudication by this Court. In view of the above discussion, there is no",,,, substance in the writ petitions filed by the petitioners, the same are, therefore, dismissed. No order as to costs.",,,,