

(2014) 04 DEL CK 0248
In the Delhi High Court
Case No : W.P.(C) 761/2013

Ex. Naik Dharamvir Yadav

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Citation : (2014) 5 AD 73

Hon'ble Judges : V. Kameswar Rao, J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Joymoti Mize, Advocate for the Appellant; Richa Kapoor, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The petitioner has filed this writ petition for quashing the letter dated October 10, 2011 whereby, the respondent No. 2 had rejected the request of the petitioner for grant of pensionary benefits on the ground that he had not completed 20 years of qualifying service on the date of resignation and also inter alia, seeking pensionary benefits including payment of arrears.

2. To understand the issue which falls for our consideration in this writ petition, some of the relevant facts are that the petitioner was appointed in Border Security Force (BSF, in short) on April 18, 1977 in the rank of Constable. He was promoted to the rank of "Lance Naik" with effect from August 25, 1988 and Naik with effect from September 12, 1990. With effect from April 01, 1993, after the petitioner had completed a total number of 15 years, 06 months and 06 days of qualifying service, he had tendered his resignation under Rule 19 of the BSF Rules, 1969 (Rules of 1969, in short) from the service, which was accepted by the competent authority.

3. Suffice to state that since the petitioner had resigned and have not put in 20 years of qualifying service, the pension was not sanctioned in his favour.

4. On December 27, 1995, the BSF had issued a G.O., whereby the decision was

conveyed for grant of pensionary benefits on resignation under Rule 19 of the Rules of 1969. On the strength of this G.O. dated December 27, 1995, blank pensionary form was forwarded to the petitioner for completing formalities for grant of pension, but, since the issue of grant of pension to personnel, who had resigned from service under Rule 19 of the Rules of 1969 after completion of more than 20 years of qualifying service was pending consideration before the Supreme Court, the pension was not sanctioned in favour of the petitioner.

5. It is the stand of the petitioner that he had made several representations from August 21, 1996 till May 1998 and thereafter, in the month of January 24, 2011. Unfortunately, it is only in the month of October 2011 that the representation was rejected on the ground that he had not completed 20 years of qualifying service at the time of acceptance of resignation.

6. The respondents in their counter-affidavits, apart from stating the undisputed facts which have been referred above, have also stated that issue of admissibility of pension under Rule 19 of the Rules of 1969 read with CCS (Pension) Rules, 1972 was put to rest by the Supreme Court vide judgment dated March 30, 2001 in Civil Appeal No. 6166/1999, titled as Union of India and Ors. Vs. Rakesh Kumar, wherein the Supreme Court has held as under:

No person can claim any right on the basis of decision which is de hors the statutory rules nor there can be any estoppels. Further, in such case there cannot be any consideration on the ground of hardship. If rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but 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..... 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 provision 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.

7. Since the petitioner had not completed 20 years of qualifying service on the date of resignation, he was not entitled to the pension. In fact, it is also the stand that their action to stop pension to officers who had already been sanctioned pension was also a subject matter of litigation, which was decided by the Supreme Court vide its judgment dated January 04, 2006, and the lead case being W.P.(C) 569/2001 titled Raj Kumar & Ors. Vs. UOI & Anr., wherein the cases brought before the Supreme Court were divided into two categories; (A) personnel who resigned and were granted pension for special reasons, even prior to the circular dated December 27, 1995 and (B) personnel, who resigned pursuant to the circular dated December 27, 1995.

8. In regard to the first category, the Supreme Court has held as under:

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 (supra), 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.

9. Thus, according to them, since all those persons, who had resigned prior to the circular dated December 27, 1995, only those were allowed pension who had been sanctioned pension and paid by the Department. It is also the respondents' case that the petitioner kept quiet for almost a decade when he submitted an application dated January 24, 2011 to the Hon'ble Home Minister, requesting for grant of pension. It is this representation which was ultimately replied to by the respondents vide the impugned letter dated October 10, 2011.

10. The respondents had also justified their action on the basis of a judgment of the Division Bench of this Court in W.P.(C) 3971/2007 titled as Ranjit Singh & Ors. Vs. UOI & Ors., wherein this Court has held, those personnel who resigned prior to circular dated December 27, 1995 but had not been sanctioned pension, were not entitled to any pensionary benefits.

11. Learned counsel for the petitioner would submit that the respondents, from time to time, have been making correspondence with the petitioner for grant of pension. She had referred to communications dated September 10, 1996 and December 1996 in this respect. According to her, these communications are enough to show that the respondents had decided to sanction pension to the petitioner.

12. On the other hand, Ms. Richa Kapur, the learned counsel appearing for the respondents would justify the action of the respondents on the basis of the judgments of the Supreme Court as referred above and also the judgment of the Division Bench of this Court in the case of Ranjit Singh & Ors. (supra).

13. Having heard the learned counsel for the parties, it is noted that on the date when the petitioner has resigned from the service of the respondent No. 2, the circular dated December 27, 1995 was not in existence. Even though it came into existence in the month of December 1995 and action in terms thereof, was sought to be taken by the respondents, it is a case where pension was neither sanctioned nor paid to the petitioner, which it appears was for the reason that the issue of grant of pension for personnel who resigned under Rule 19 of the Rules of 1969 was pending consideration before the Supreme Court. We note that the Supreme court in Union of India Vs. Rakesh Kumar's case (supra), has, in categorical terms, held that personnel, who were permitted to resign from services under Rule 19 of the Rules of 1969 before the attainment of 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. The Supreme Court has also observed that the G.O. dated December 27, 1995 does not confer any additional right of pension on the BSF employees. Further, the Supreme Court in Raj Kumar's case (supra) had drawn a distinction between the employees, who had resigned earlier to the circular dated December 27, 1995 and had been granted pension for special reasons and continued to draw it and held that in the case of such employees, there can be no stoppage of pension, in equity, as they have drawn pension for long periods; they shall not be asked to refund the pension amount nor the pension can be stopped in those cases. As observed by us above, it is not a case where the pension has been sanctioned or has been paid to the petitioner. It was only the process towards sanctioning the pension, which was set into motion by the communications dated September 10, 1996 and December 1996. The case of the petitioner does not fall in any of the categories mentioned by the Supreme Court in Raj Kumar's case (supra) for the reason that the pension was not sanctioned nor paid and further, he has retired in the year 1993, much before 1996. We concur with the view taken by the Division Bench of this Court in the case of Ranjit Singh & Ors. (supra) and note for benefit the following observation:

24. The writ petitioners before us are personnel who resigned prior to the circular dated 27.12.1995 being issued. We note that such personnel to whom pensions were granted were placed in category-A by the Supreme court and for whom direction No. 4 is applicable.

25. There was none before the Supreme Court to whom pension was not released. The Supreme court was considering the case of pre 1995 retirees to whom pension was granted but was later on withdrawn.

26. Thus, it can sufficiently be said that all those to whom no pension was released and had retired pre 1995 would be entitled to no relief.

14. In view of our above conclusion, we do not find any merit in the writ petition. The same is dismissed.

15. No costs.