
(2008) 02 P&H CK 0071
In the Punjab And Haryana At Chandigarh

Hardyal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Citation : (2008) 2 PLR 142

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner has invoked the extra ordinary writ jurisdiction of this Court in releasing proportionate pension in view of Rule 49(2)(b) of the Central Civil Services (Pension) Rules, 1972 (hereinafter to be referred as "1972 Pension Rules").

2. The petitioner was enrolled as Constable in Indo Tibetan Border Police (hereinafter to be referred as "ITBP") on 02.04.1965. He resigned in the year 1976 on account of illness of his father which was allowed and he was made to resign from 31.08.1976. The petitioner claims to have made an application on 10.02.2003, Annexure P3, for release of pension. Subsequently, another application was made on 12.01.2006, Annexure P4. Since pension was not released to the petitioner, the petitioner filed the present writ petition. The claim of the petitioner is that a Division Bench of this Court in C.W.P. No. 17053 of 2003 titled Nand Lal v. Union of India decided on November 01, 2004, has granted pension in case of resignation of a member of Border Security Force (hereinafter to be referred as "BSF").

3. In reply, it has been pointed out that the writ petition is liable to be dismissed on the ground of delay as there is inordinate and unexplained delay of 30 years. The petitioner resigned from ITBP on 31.08.1976, whereas the writ petition has been filed in March, 2006. Reliance is placed upon a Division Bench judgment of this Court in Lt. Col. Balwant Singh v. Union of India 2003(3) Services Law

Reporter 627. It is also pointed out that in terms of 1972 Pension Rules, on resignation from a service or a post, the past service stands forfeited and, therefore, the petitioner is not entitled to pension. It is also pointed out that the petitioner has not completed 20 years of qualifying service and, thus, he is not entitled to pension under Rule 48-A of 1972 Pension Rules and that the provisions of Indo-Tibetan Border Police Act, 1992 (hereinafter to be referred as "ITBP Act") and the rules framed thereunder are not applicable in view of Section 157 of the ITBP Act as the petitioner was not in the strength of ITBP when the aforesaid Act came into force.

4. Learned Counsel for the petitioner has relied upon the provisions of Section 8 of ITBP Act and Rule 27 of the ITBP Rules. The said Act and the Rules came into force in the year 1992, whereas the petitioner resigned in the year 1976. Section 8 of the Act prohibits any resignation by a member of the force. However, under Rule 27, with regard to special circumstances, a member of the force can be permitted to resign before completing the term of engagement. Therefore, the said Act and Rules cannot be relied upon by the petitioner.

5. Learned Counsel for the petitioner has then relied upon Rule 49(2)(b) of 1972 Pension Rules. However, the said Rule is applicable in respect of a government servant retiring in accordance with the Rules. Since the petitioner has put in his resignation, it is not a case of retirement. Rule 26 of 1972 Pension Rules is the owner which is applicable. The said Rule contemplates that resignation from a service or post entails forfeiture of past service. Therefore, in terms of Rule 26 of 1972 Pension Rules, on resignation, the petitioner has forfeited his past service.

6. Reliance by the petitioner on the judgment in Raj Kumar and Others Vs. Union of India (UOI) and Another, is not tenable. The Rule discussed in the aforesaid case was Rule 19 of Border Security Force Rules, 1969 wherein an amendment was carried out on 27.12.1995 so as to grant pension to a member of the force who resigned from the force before attainment of the age of retirement. However, in the present case, it is 1972 Pension Rule which are applicable. The ITBP Act and the Rules framed under the said Act came into force in the year 1992, whereas the petitioner has submitted his resignation in 1976 and at that time his service conditions were governed by the aforesaid 1972 Pension Rules. Therefore, judgment in the case of members of the BSF does not provide any assistance to the petitioner. Similarly, Division Bench judgment of this Court is also in respect of the members of BSF which, as mentioned above, stands on a different footings.

7. Apart from the said facts, we find that the claim of the petitioner suffers from gross delay and laches. The petitioner submitted his resignation in the year 1976. However, he invoked the jurisdiction of this Court in the year 2006 i.e., almost 30 years after his resignation.

8. In view of the above, we do not find any ground to interfere in the writ jurisdiction of this Court. Consequently, the present writ petition is dismissed.