
(2010) 05 RAJ CK 0046
In the Rajasthan High Court

Idan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Citation : (2010) 3 RLW 2726

Hon'ble Judges : Gopal Krishan Vyas, J;A.M. Kapadia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—Instant special appeal has been filed by the appellant challenging the judgment dated 30.06.2008 passed by the learned Single Judge in S.B. Civil Writ Petition No. 4257/2006, whereby, the writ petition filed by the appellant was dismissed.

2. Brief facts of the case are that the petitioner- appellant Idan Singh s/o Kalyan Singh joined Border Security Force on 03.05.1986 on the post of Driver. Later on, an application was filed by him under Rule 19 of the BSF Rules, 1969 for retirement. Accordingly, he was discharged from service in terms of circular dated 27.12.1995 under communication dated 11.06.1997. Application for retirement of the appellant Idan Singh was accepted with effect from 31.07.1997. As per his tenure, appellant Idan Singh worked in the BSF for 11 years 2 months and 28 days. In the communication dated 11.06.1997, it was observed that employee will be entitled for all pensionary benefits according to rules as per his entitlement.

3. After passing order for retirement of the appellant with effect from 31.07.1997, the respondents wrote a letter on 14.10.1998 to the appellant, whereby, he was informed that he should re-join the duties at the headquarters by 30.10.1998. In the communication, it was also stated that the BSF personnel proceeded resignation under BSF Rules 19 during 1996, 1997 and 1998 with less than 20 years of service under mistaken impression with pensionary benefits and

who have not been granted pension should be taken back in service as a special case.

4. As per averments made by the appellant in the writ petition as well as this special appeal, after receiving the letter dated 14.10.1998 immediately he made representation to the respondents and requested them to grant him pension from the date of his retirement as he has completed 11 years" service which is prescribed for proportionate pension. The respondents again wrote a letter to the appellant in response to representation filed by him on 03.06.1999, whereby, the appellant was directed to rejoin the service before 30.06.1999.

5. As per contention of the appellant, in response to letter dated 03.06.1999, the appellant went to respondent Department to rejoin but respondents did not take him back in service without any reason or justification and orally refused to take him back in service. Appellant-petitioner filed certain documents to prove that he remained present in the office.

6. The appellant being aggrieved by the illegal and arbitrary action of the respondents earlier preferred writ petition before this Court, being S.B. Civil Writ Petition No. 3275/1999, in which, vide order dated 26.04.2001, while disposing of the writ petition, it was observed that the respondents are requested to consider the case of the appellant for taking him back in service in accordance with rules and also in pursuance of the order calling him back in service, if he is not otherwise ineligible/unsuitable. The authority will further determine as to how it shall treat the interregnum period strictly in accordance with law.

7. After passing the above order dated 26.04.2001 by learned Single Judge of this Court when no order was passed by the respondent Department, then, a representation was made with request that he may be taken back in service or to release his pensionary benefits. But, his prayer was not accepted nor appellant was taken back on duty. Thereafter, when no action was taken by respondents inspite of order made by this Court, then, the appellant made representations to Vice President of India and Home Minister of India and, upon the above representations, the respondents wrote letter dated 21.01.2003, whereby, the appellant was informed that his case has been closed and no further correspondence in this regard will be entertained.

8. As per contention of the appellant in the appeal, a representation was made again by the appellant to the respondents but no action was taken for redressal of his grievance. Therefore, at last, again a writ petition was filed by the appellant and the said writ petition was registered as S.B. Civil Writ Petition No. 169/2005. In the said writ petition, appellant made a prayer to quash communication dated 21.01.2003, whereby, it was communicated to the appellant that no further correspondence in this regard will be entertained by the office. The said writ petition was also disposed of vide order dated 17.02.2009 along with other six cases with a direction that the petitioners shall file representation communicating their all claims for pension to the Director

General, Border Security Force within a period of two weeks from the date of receipt of certified copy of this order by the respondent and respondents shall take notice of the judgment of the Raj Kumar's case and pass fresh speaking order in individual case keeping in view the facts of the individual case and the said exercise shall be done by the respondents within a period of four months from the date they received certified copy of the order by the petitioners and disposal of the representation shall also be conveyed by the respondents to the petitioners.

9. In pursuance of the aforesaid order, the appellant-petitioner received a communication dated 08.06.2006 from the respondents, in which, it was observed that the case of the appellant has been considered in detail and his claim has been rejected by the competent authority in the light of para 1 of judgment dated 04.01.2006 passed by the Supreme Court of Raj Kumar and Others Vs. Union of India (UOI) and Another,

10. Impugning the order dated 04.01.2006, the appellant filed writ petition being S.B. Civil Writ Petition No. 4257/2006. Said writ petition was dismissed by the learned Single Judge vide judgment dated 30.06.2008 which is under challenge in this special appeal.

11. Learned Counsel for the appellant vehemently argued that the judgment rendered by the learned Single Judge impugned in this appeal is not based upon proper consideration of the facts, so also, material on record, therefore, the impugned judgment deserves to be quashed.

12. In this case, admittedly a conscious decision was taken by the respondents with regard to those BSF personnel who proceeded to resign from the posts as per Rule 19 of the Rules during the period 1997, 1998 with less than 20 years of service under mistaken impression of availability of pensionary benefit, therefore, those personnel who have not been granted pension shall be taken back in service as special case. Petitioner-appellant was also given opportunity vide communication dated 14.10.1998 that since he proceeded on resignation under Rule 19 of the BSF Rules, therefore, he is directed to join duty at the headquarters by 30.10.1998. Further, it is observed in the letter that the absence period will be regularized while granting leave and he is required to refund the GPF and other dues paid to him while proceeding on resignation. In pursuance of the above order, the appellant was to be taken back in service but, in spite of reporting at the office, he was not taken on duty without giving any sufficient reason or justification and he was orally refused to join duty.

13. Therefore, in the above circumstances, writ petition was filed by the appellant which was registered as S.B. Civil Writ Petition No. 3275/1999. Along with that writ petition, certain documents were produced on record showing that he was not taken back on duty in spite of the fact that he attended the office. The said writ petition was decided by the learned Single Judge of this Court, in which, it was specifically observed by the learned Single Judge to consider the case of

the petitioner for taking him back in service and, also, in pursuance of the order of calling him back to join service if he is not otherwise ineligible/unsuitable. Further, it was observed that the authority will further determine as to how it shall treat the interregnum period strictly in accordance with law.

17. The above said order of this Court passed in the first writ petition filed by the petitioner was not complied with, therefore, in the compelling circumstances, another writ petition was filed by the petitioner-appellant which was registered as S.B. Civil Writ Petition No. 169/2005. In the said writ petition, it was stated that earlier order made in the previous writ petition filed by the petitioner has not been complied with, therefore, the respondents may be directed to take the petitioner back in service with all consequential benefits, or in the alternative, release pension to the petitioner. That writ petition, along with other connected matters, was decided by a common order on 17.02.2006, in which, the petitioners were given liberty to file representation indicating their all claim for pension before the respondent Director General, BSF and, further, the respondents were directed to decide the representation while taking notice of the judgment of the Raj Kumar's case (supra) and pass fresh speaking order in individual case keeping in view the facts of the individual case.

18. In pursuance of the order dated 17.02.2006, the petitioner-appellant moved representation for consideration but in pursuance of the direction issued by this Court in S.B. Civil Writ Petition No. 169/2005, upon his representation, the petitioner received communication dated 08.06.2006, in which, it was informed that he was given opportunity twice to re-join duty but he did not avail the chance to be re-inducted in the Force and hence no pensionary relief is admissible to you since you did not complete the requisite length of qualifying service to earn pension as per CCS (Pension) Rules, 1969. Said order was challenged in the writ petition, in which, the learned Single Judge has ignored the fact that in the first writ petition, being S.B. Civil Writ Petition No. 3275/1999, order was made by this Court on 26.04.2001 to consider the case of the petitioner for taking him back in service in accordance with rules and dismissed the writ petition on the basis of those documents which were already considered in the first writ petition filed by the appellant and erroneously held that the appellant-petitioner is not desirous to rejoin the service but he is only claiming pension. Therefore, the finding of the learned Single Judge is not based upon sound reasons. More so, it can be said that while deciding the matter vide the impugned judgment dated 30.06.2008, the learned Single Judge has committed error while considering again the material which was already considered in S.B. Civil Writ Petition No. 3275/1999 and erroneously held that the petitioner is not entitled for rejoining service.

19. Learned Counsel for the appellant further submits that even in Raj Kumar's case (supra) the petitioner- appellant is entitled for rejoining the service but this aspect of the matter has not been considered by the learned Single Judge, therefore, the impugned judgment deserves to be quashed.

20. Per contra, learned Counsel appearing on behalf of the respondents submits that no error has been committed by the learned Single Judge while dismissing the writ petition filed by the appellant which is impugned in this appeal.

21. Learned Counsel for the Union of India vehemently argued that the appellant has failed to comply the directions issued by the authorities concerned to rejoin the service, therefore, while complying with the directions issued by this Court the impugned order dated 08.06.2006 was passed, whereby, it was informed to the petitioner-appellant that inspite of granting opportunity twice to rejoin the service he has not availed the chance to be re-inducted in the Force, therefore, no pension is admissible to him since he did not complete the requisite length of service. In this view of the matter, no error was committed by the authorities of the respondent Department while sending communication dated 08.06.2006 to the appellant because in the said communication the representation filed by the appellant was decided and the learned Single Judge has rightly arrived at the finding that the petitioner Idan Singh was given repeated opportunity to rejoin but he failed to avail the chance, therefore, the order so passed upon his representation on 08.06.2006 cannot be said to be unjustified and improper. Therefore, there is no error in the judgment rendered by the learned Single Judge and the appeal deserves to be dismissed.

22. We have considered the rival submissions made by respective parties.

23. Undisputedly, it is evident from the record that the appellant was employee of the BSF and was working on the post of Constable (Driver) and he worked with the BSF for 11 years and he filed the application for resignation under wrong impression that he is entitled for pensionary benefit. But, a conscious decision was taken by the respondents with regard to those employees who proceeded with resignation under Rule 19 of the BSF Rules during the years 1997 and 1998 with less than 20 years of service under mistaken impression of pensionary benefit to take them back in service as special case and, for the said purpose, the petitioner was given opportunity to rejoin the service but, inspite of the fact that the petitioner-appellant gave his attendance in the office, he was not taken on duty, therefore, a writ petition was preferred by him and the said writ petition was registered as S.B. Civil Writ Petition No. 3275/1999, in which, on 26.04.2001, following directions were issued:

Thus, the respondents are requested to consider the case of the petitioner for taking him back in service in accordance with Rules and also in pursuance of the order calling him back in service, if he is not otherwise ineligible/unsuitable. The authority shall further determine as to how it shall treat the interregnum period strictly in accordance with law.

24. After passing of the said order, it was the duty of the respondents to pass order for taking him on duty but it is admitted position of the case that inspite of order made on 26.04.2001 no order whatsoever was passed or communication sent to the petitioner-appellant to join back the service. The said two

opportunities which is said to be given to the petitioner-appellant to join service were given prior to passing order on 26.04.2001 and not after the order passed by the learned Single Judge by this Court; meaning thereby, there was total inaction on the part of the respondents to comply with order passed by the learned Single Judge on 26.04.2001 in S.B. Civil Writ Petition No. 3275/1999.

25. In the compelling circumstances, therefore, again a writ petition was filed by the petitioner when the above directions were not complied with. By the time the second writ petition (S.B. Civil Writ Petition No. 169/2005) was decided on 17.02.2006, Hon''ble Supreme Court had rendered judgment in the case of Raj Kumar and Others Vs. Union of India (UOI) and Another, in which, certain directions were issued. Therefore, the learned Single Judge while deciding seven writ petitions including the writ petition filed by appellant Idan Singh, passed common order on 17.02.2006 that the petitioners shall file a representation indicating their all claims for pension before the respondent Director General, BSF within a period of two weeks from the date of receipt of the certified copy of this order by the respondents; and, the respondents shall take notice of the judgment of the Raj Kumar's case (supra) and pass a fresh speaking order in individual case keeping in view the facts of the individual case. This exercise shall be done by the respondents within a period of four months from the date they received certified copy of this order by the petitioners. The disposal of the representation shall also be conveyed by the respondents to the petitioners.

26. In pursuance of the representation filed by the appellant in compliance of the above order, it was informed by the respondents to the appellant that inspite of granting opportunities to re-join he has not joined the duties, therefore, no pensionary relief is admissible to him since he has not completed requisite length of service. In the impugned judgment, learned Single judge of this Court has observed that the reasons for denial of pension are proper. But, after considering all aspects of the matter, we are of the opinion that finding of the learned Single Judge with regard to dismissal of the writ petition filed by the petitioner is totally unfounded.

27. In the case of Raj Kumar and Others Vs. Union of India (UOI) and Another, following directions were issued:

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 reinduction. 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 reinducted into service even now; and
 - (b) those who cannot be reinducted 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 reinduction into 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 reinduction in service shall necessarily have to forfeit their pension, if they have not reported for service by virtue of the circular dated 17-1-1998. 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 reinduction into service, and those falling in category (B)(i)(a) shall be so reinducted, 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 reinduction. The authorities shall indicate the deadline by which such persons shall offer themselves for reinduction.

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 reinducted 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.

28. Petitioner-appellant gave resignation on 31.07.1997, therefore, as per verdict of Raj Kumar's case (supra) his case falls under category (B)(ii), in which, those employees who were retired subsequent to 1996 were not sanctioned pension and were directed to report for re-induction in service by virtue of circular dated 17.04.1998 and individual letters. Admittedly, the petitioner-appellant was to be taken back on duty in compliance of order dated 26.04.2001 passed in his first

writ petition. But, till passing of the communication/ letter dated 08.06.2006, no letter was issued to the petitioner to re-join the service; meaning thereby, the order passed by this Court on 26.04.2001 was not complied with by the respondents and the learned Single Judge held that opportunities were given to the petitioner to re-join the service but he has not availed those opportunities. In our opinion, so called opportunities were given to the appellant prior to passing order dated 26.04.2001 and the fact of granting opportunity was considered by the learned Single Judge of this Court and, thereafter, again, order was passed for considering the case of the petitioner to take him back in service but till 08.06.2006 no communication was passed. Again, in the subsequent writ petition filed by the petitioner, it was ordered by the learned Single Judge to decide the representation in the light of Raj Kumar's judgment that he has not availed the opportunity to rejoin the service. As per facts of the present case, category (B) (ii) shall apply in the case of the appellant because in the case of the appellant decision was taken to take him back on duty but upon reporting on duty he was not allowed to join duty. Therefore, upon filing writ petition an order was passed on 26.04.2001 by this Court for taking him back on duty and, inspite of the directions issued by this Court, no compliance was made by the respondents and in pursuance of representation filed as per direction given by this Court in subsequent writ petition, straight away, while observing in the communication dated 08.06.2006 respondent refused to re-induct the petitioner-appellant in service; meaning thereby, in absence of any document passed by the respondents after passing of order dated 26.04.2001 by this Court, it cannot be said that in compliance of the order passed by this Court any communication was sent to the petitioner-appellant to re-join the service. This important aspect of the matter has not been considered by the learned Single Judge and while treating the earlier opportunities which were given to the petitioner before 26.04.2001 the learned Single Judge gave finding that communication dated 08.06.2006 is just and proper.

29. In our opinion, on the basis of above discussion, it emerges that inspite of order dated 26.04.2001 when no opportunity has been given to the appellant for re- induction in service, then, it cannot be said that appellant was given any opportunity re-join the service for completion of required period of pension.

30. In this view of the matter, this special appeal is allowed. Judgment dated 30.06.2008 passed by the learned Single Judge in S.B. Civil Writ Petition No. 4257/2006 is hereby quashed and set aside. Respondents are directed to take the appellant on duty immediately and they shall treat appellant on duty since 26.04.2001 and determine as to how the interregnum period with effect from 31.07.1997 to 26.04.2001 shall be treated.

31. No order as to costs.