
(2008) 05 RAJ CK 0133
In the Rajasthan High Court

Karan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-05-2008

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2008) 4 RLW 3329

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—In this case, the petitioner has prayed for direction to the respondents to grant pension w.e.f. 1.2.1979 and pay him all consequential benefits along with interest @ 18% per annum.

2. As per the facts of the case, the petitioner joined BSF on 30.7.66 as constable and further he was promoted to the rank of Havildar and then after completion of more than 12 years of service, the petitioner sought voluntary retirement from service.

3. According to the petitioner, the respondent No. 4 accepted the resignation under Rule 19 of BSF Rules 1969 with full pensionary benefits. The petitioner has placed on record the certificate of termination of service issued by the respondent No. 4 dated 1.1.1979. As per the petitioner, a BSF employee is entitled to seek voluntary retirement after completion of 10 years of service under Rule 19 of the BSF Rules. The petitioner has reproduced Rule 19 under which the petitioner made a prayer for resignation from service. The petitioner is claiming pension on various grounds and with regard to his claim, it is submitted that the respondents had issued various policies for grant of pension to the employee and more specifically he has placed on record the policy issued on 27.12.1995 Annexure-2 and submitted that as per policy, the Government has agreed to the view that a member of Force is entitled to get pensionary benefits

on resignation under Rule 19 of the BSF Rules. The petitioner's case is that the BSF authorities were accepting resignations from the members of the force after completion of ten years of service under Rule 19 with full pensionary benefits, therefore, the petitioner's case was to be governed by the position of Rule existed at the time of his retirement and also by policy Annexure-2. When the petitioner's claim for pension was not accepted then the petitioner personally visited the Battalion and requested the authorities for finalisation of his case for pension then he was assured by the respondent authorities that within short time his case will be finalized. On 25.7.1997, a letter was received by the petitioner by which he was informed that his case for pension is under consideration but there are some defects and a certificate of non employment was sought duly attested by a Gazetted Officer. As per the petitioner, he has submitted an affidavit as well as the certificate of non-employment issued by the Gram Panchayat, Bardawa duly attested by Development Officer, P.S. Didwana. The case of the petitioner was not finalized as assured by the respondent, therefore, after waiting for two years, the petitioner once again approached the Battalion then he was informed that there is dispute for grant of pension to those who have resigned but as per the petitioner, his case is different as he had resigned in the year 1979, therefore, the respondents are under obligation to finalize his case for pension. As per the petitioner since all the members of the Force, who had resigned are being granted pension except those who have resigned after 1997 or 1998 and they were again informed that the matter may take sometime. In the year 2003, the petitioner came to know that other members of BSF, who were in receipt of pension and have sought resignation after the petitioner, their pension has been stopped as they were not entitled for pension after completion of 10 years of service because as per Rule 19 of the BSF Rules, 20 years qualifying service is required for grant of pension. The petitioner again approached the Unit for sanction of pension, which is allowed to others from the date of resignation but he was informed that now as per Rule 19 and judgment of Apex Court, no pension is admissible, therefore, pension granted earlier after completion has been stopped in view of Rule 19 and judgment of Apex Court. As per the petitioner, through newspaper in February, 2006, he got information that Hon'ble Supreme Court has allowed pension to those personnel who had resigned prior to 27.12.1995 and whose pension was stopped. In this view of the matter, as per the petitioner he is entitled for pension as he has resigned prior to 27.12.1995 after completion of ten years of service.

4. The main argument of learned Counsel for the petitioner is that he has rendered more than ten years of service and resigned in the year 1979 and many other persons were granted pension who resigned from service after ten years in accordance with Rule 19 of BSF Rules. Therefore, the said benefit cannot be denied to the petitioner. Further it is submitted that when BSF has granted pension to all the members to sought voluntary retirement after ten years of service either prior to 1979 and even upto 1995 then why they are discriminating the case of the petitioner, therefore, as per the petitioner, he has been denied

the pensionary benefits without assigning any reasons.

5. The respondents filed reply in this case and it is specifically stated that though the petitioner was appointed in the year 1966 and continued upto his voluntary retirement on 31.1.1979 but he had completed service of 12 years six months and one day. The application for voluntary retirement was accepted by the then Commandant, 100 Bn BSF being appointing authority under the provisions of Rule 19 (1) of the BSF Rules without any pensionary benefits. The order Annexure-R/1 has been placed on record for substantiating the above submission as per Rules. In the year 1996, the petitioner had submitted an application and made request for pension in terms of communication dated 27.12.1995 whereas it is directed to review all cases of resignation accepted in respect of member of the force, who were not allowed pensionary benefits. In pursuance of the said communication, all such cases those who had proceeded on resignation has been reviewed including the case of petitioner and the pensionary benefits were allowed. The respondents have placed on record Annexure R/3 by which eight persons were allowed pensionary benefits. The case of the petitioner for grant of pension was sent to PAD BSF, New Delhi vide letter dated 13.1.1997 and in return, some additional documents asked by PAD, which was also sent. However, the pension case was not finally decided by the PAD.

6. On 15.1.1998, FHQ (Pers Dte) BSF New Delhi issued memo under the signature of DG BSF and intimated to all formation of BSF that pension is not admissible on resignation/voluntary retirement after 10 years of service. The respondents have placed on record the said communication dated 15.1.1998 as Annexure R/5.

7. In continuance of the above letter on 28.3.1998, it was informed that issue with regard to grant of pension is pending in an appeal before Hon''ble Supreme Court. Therefore, keeping in view of above letters, the respondents not processed with petitioner''s case and Unit also stopped the correspondence on the subject with PAD BSF New Delhi.

8. The controversy involved in this case was finally decided by Hon''ble Apex Court in case of Union of India and Others Vs. Rakesh Kumar etc., and in the light of the said judgment, an order was issued by the respondents on 17.7.2001 whereby the payment of pension in respect of BSF personnel those who proceeded on resignation under Rule 19 (1) of the BSF Rules and not completed 20 years of qualifying service was stopped. After passing of above order dated 17.7.2001 in pursuance of the judgment by Hon''ble Apex Court in the above-case, several petitions were filed by affected persons before Hon''ble Supreme Court and Hon''ble Supreme Court while considering the aforesaid case of Union of India v. Rakesh Kumar delivered a judgment in case of Raj Kumar v. Union of India and Ors. on 4.1.2006 and as per the said judgment of Hon''ble Apex Court, the petitioner is not entitled to pensionary benefits as he was not drawing pension as special case while accepting resignation by the competent authority earlier. In the case of Raj Kumar (supra), the Hon''ble Supreme Court on the

basis of equality passed an order that pension of those pensioners shall not be stopped, who were getting/drawing pension before the judgment of Rakesh Kumar's case (supra). Therefore, as per the respondents no case is made out in favour of the petitioner for grant of special pension upon resignation filed by the petitioner.

9. Learned Counsel for the respondents placed on record the judgment rendered by Hon''ble Supreme Court in case of Raj Kumar v. Union of India and Ors. (supra) and submitted that the petitioner is not entitled for pensionary benefits upon resignation filed by him under Rule 19 (1) of the BSF Rules because at the time of seeking voluntary retirement/resignation he had not completed 20 years of service, which is condition precedent for grant of pensionary benefits. It is also submitted that in view of judgment in case of Rakesh Kumar's case (supra) rendered by Hon''ble Apex Court wherein it has been held that there is no entitlement of pensionary benefits in view of Rule 19 of the BSF Rules and in subsequent judgment in Raj Kumar's case (supra), a sympathetic view was taken for those pensioners who were drawing pension. Admittedly, the petitioner was not getting any pension and his case was pending for want of final sanction.

10. In rejoinder, it is stated by the petitioner that in terms of policy Annexure-2 dated 27.12.1995, the petitioner was entitled to get pension under Rule 19. Further, it is stated that as per para 5 of the policy Annexure-2, it is clear that in case no reduction in pension is specified in the order of acceptance of resignation, it would imply that no reduction has been made. In this policy, direction was issued to all the competent authorities to review all cases of grant of pensionary benefit within shortest possible time and case of petitioner was decided and the accounts authorities were directed to issue PPO but the same was not issued in time. Meaning thereby, once an order has been issued the petitioner was allowed pensionary benefits vide order dated 14.12.1996, the question of drawing pension or not is irrelevant, therefore, the delay by the subordinate office in issuance of PPO cannot subsequently disentitle the petitioner from getting pension on the ground that petitioner was not drawing pension. It is also submitted in the rejoinder that once all the personnel of BSF who have been granted pension in terms of Policy Annexure-2, the petitioner cannot be discriminated due to delay in issuance of PPO because the authorities issued the policy of stoppage of pension vide policy Annexure-R/5, therefore, there is no ground to deny pension to the petitioner. As per the petitioner although the Hon''ble Supreme Court in case of UOI v. Rakesh Kumar it is held that the BSF personnel were not entitled for pension before completing 20 years of service but in the subsequent judgment in case of Raj Kumar v. UOI and Ors. the Hon''ble Supreme Court has held that the BSF personnel who had resigned prior to circular dated 27.12.1995 they were entitled for pension.

11. Lastly, it is submitted that those persons who were granted pensionary benefits even for the service less than 20 years were protected for continuance of pensionary benefits by the Hon''ble Supreme Court in case of Raj Kumar v.

Union of India and Ors. decided on 4.1.2006 but the petitioner has been denied pensionary benefits only on the ground that before issuance of PPO, Hon''ble Supreme Court has rendered judgment in UOI v. Rakesh Kumar in which it has been held that for the purpose of grant of pensionary benefits, the employee is required to complete 20 years of service in accordance with Rule 19 of the BSF Rules. Therefore, the petitioner's case is altogether different than those who were denied pensionary benefits and in whose favour the Hon''ble Supreme Court has passed an order for continuance of pension who were getting pension although they did not complete 20 years of service on the ground of equity because they were actually getting pensionary benefits and in case of petitioner although the pension was sanctioned but non-completion of papers time was consumed in issuing PPO and before issuance of PPO, the judgment in case of UOI v. Rakesh Kumar was delivered by Hon''ble Apex Court in which it was held that those employees who had not completed 20 years of service and have resigned from services, then they are not entitled for pensionary benefits who had sought voluntary retirement under Rule 19 (1) of the BSF Rules, therefore, equity lies in favour of the petitioner because similarly situated persons whose cases were considered along with the petitioner and were granted pensionary benefits are still getting pension as per the judgment rendered by Hon''ble Supreme Court in case of Raj Kumar v. UOI and Ors. And the petitioner is not getting pension because compliance of the order dated 14.12.1996 has not been made promptly by the respondents and in the meantime, judgment was delivered by Hon''ble Apex Court by which those BSF employees were not declared ineligible for pensionary benefits who had not completed 20 years of service and took voluntary retirement.

12. I have considered the rival submissions made by the parties.

13. In my opinion, admittedly, the petitioner had worked for 12 years, six months and one day and admittedly as per the judgment of Hon''ble Supreme Court in case of UOI v. Rakesh Kumar, it has been held that those BSF persons who proceeded on resignation under Rule 19 (1) of the BSF Rules are not entitled for pensionary benefits as they had not completed 20 years of qualifying service. Meaning thereby, under the Rules the petitioner is obviously not entitled for pensionary benefits. Therefore, as per the Rules, the petitioner cannot claim pension as a matter of right. The petitioner has made his claim on the basis of equity as per the judgment rendered by Hon''ble Supreme Court in case of Raj Kumar v. Union of India and Ors. wherein the Hon''ble Supreme Court has held as follows:

We are unable to accept the contention urged on behalf of the petitioners that the confusion with regard to the interpretation of Rule 19 of BSF Rules was cleared only as a result of the judgment in Rakesh Kumar (supra). Even before Rakesh Kumar (supra) was decided, way back in the year 1998 itself, the authorities seemed to have realised their mistake as evidenced by the letter dated 15.01.1998 followed by the circular dated 17.10.1998. Rakesh Kumar

(supra) was decided only in the year 2001, almost 3 years later. Such of the BSF personnel who had resigned in the hope of getting pensionary benefits, although not eligible for pension under the CCS Pension Rules 1972, had been given the opportunity of getting back into service by virtue of the circular dated 17.10.1998. Despite the deadline for reporting being extended from 30.04.1999 to 31.08.1999, about 697 personnel had failed to avail of the opportunity of returning to service. There cannot be any equity in favour of those that failed to avail of the opportunity of rejoining service. If any of them failed to take advantage of the offer for re-induction into service, they have only themselves to thank. In such cases, obviously, there cannot be any relief granted in the present writ petitions, contrary to the law declared by Rakesh Kumar (supra).

There is no doubt that the position in law is that declared in Rakesh Kumar (supra) viz. that Rule 19 of the BSF Rules does not grant any right to pension in cases where pension is not payable under the CCS Rules 1972. Thus there is no question of this Court directing payment of pension to persons who are otherwise ineligible under the CCS Pension Rules 1972. The contention raised in all these petitions on the question of law must necessarily fail in the light of the clear pronouncement in Rakesh Kumar (supra).

Learned counsel referred to Union of India and Ors. v. Lt. Col. P.S. Bhargava, and Praduman Kumar Jain v. Union of India and Anr. After perusal, we find that they are not of any help to us in deciding the issue before us. The issue before us arises out of the terms of Rule 19(1) of the BSF Rules and the provisions of the CCS (Pension) Rules, 1972 and has, in fact been squarely decided in Rakesh Kumar (supra). 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 letters dated 31.10.1998 not to report for re-induction. Their pension has been stopped pursuant to the judgment in Rakesh Kumar (supra).

These persons can be further divided into two sub- categories:

(a) those who are in a position to be reinducted into service even now.

(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.

14. 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 circular dated 17.10.1998 and on condition that they shall refund the GPF and pension amounts drawn by them till reinduction. 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 (supra). 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 (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.

We have made the aforesaid directions in exercise of our powers under Article 142 of the Constitution in order to do complete justice to a section of the personnel who would otherwise be placed in an inequitable situation for which the authorities are also partly to blame. It is open to this Court to mould the relief by safeguarding the interest of the parties even while declaring the law. The paramount consideration in such cases should be to ensure that there is no injustice caused (see in this connection *Deb Narayan Shyam and Ors. v. State of W.B. and Ors.*" and *State of Bihar and Ors. v. Kameshwar Prasad Singh and Ors.*". Barring this limited relief no other relief is due to the petitioners before us. Subject to the aforesaid limited relief all the petitions are dismissed.

14. Upon perusal of the above judgment rendered by Hon"ble Supreme Court, it is clear that only those BSF personnel were protected for grant of pensionary benefits on the basis of equity in whose favour the pension was released and they were drawing their pension for long period. Therefore, the case of the petitioner does not fall in the said category whereby on the ground of equality pensionary benefits were protected for those employees who were actually drawing pension. Therefore, the petitioner is not entitled to get any relief from this Court as prayed for by him. Accordingly, the writ petition is dismissed.