
(2015) 04 MP CK 0081
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2421 of 2007

Munna Lal Nagar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2015) 04 MP CK 0081

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : D.K. Katare, learned Counsel, for the Appellant; Vivek Khedkar, Assistant Solicitor General, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rohit Arya, J.

1. By filing this writ petition under Article 226 of the Constitution of India, petitioner has sought relief in the form of direction/order to respondents for granting pensionary benefits to the petitioner as granted to other employees and/or to reinstate the petitioner to complete 20 years" of service to make him eligible for grant of pensionary benefits.

2. Facts relevant and on record necessary for disposal of this writ petition are to the effect that at the relevant time petitioner was serving respondents on the post of Naik on permanent posting in the office of Commandant 112 Batalion, BSF w.e.f. 26/6/1993. In the month of April, 1994 petitioner had submitted an application for resignation from service due to some domestic problems at his home. His resignation was accepted on 15/4/1994 under Rule 19 of the Border Security Force Rules, 1969 vide order dated 11/5/1994. At the time of resignation petitioner had completed 17 years 3 months and 21 days of service in Border Security Force. In continuation thereon petitioner had received a communication dated 3/5/1997 whereby it was given to understand that

petitioner's case for pensionary benefits was reviewed in pursuance to authority letter No. 24/1/95 Personal Staff dated 27/12/1995, Annexure P/2, and accordingly pensionary benefits in full was sanctioned to him in terms of Rule 49(2)(b) of CCS Pension Rules, 1972 and Rule 19 of BSF Rules 1969 w.e.f.15/4/1994. However, since petitioner's pension was not released pursuant to aforesaid communication dated 3/5/1997 he made a representation. The aforesaid representation was processed and forwarded to competent authority with covering letter dated 9/5/2000. In response thereto, communication was made to the concerned authority dated 30/6/2000, Annexure P/1, wherefrom it is apparent that petitioner's case for pension was rejected due to non-completion of required qualifying service of 20 years with the authority letter dated 14/1/1998. It was further stated that petitioner cannot be recalled in service to complete 20 years of service as petitioner had resigned prior to December, 1995 and such facility was available only to such employees, who had resigned after December, 1995 and had not completed 20 years of service. Reference was made to the authority letter No. R-3408 dated 12/10/1998 for the aforesaid decision. Being aggrieved thereby petitioner filed detailed representation dated 24/7/2000. Since the same was not considered within the reasonable time, therefore, petitioner had filed the instant writ petition.

3. Respondents have filed counter affidavit contending that due to misinterpretation of Rule 19 of the Rules of 1969, the petitioner was wrongly called upon to submit his pension papers in view of subsequent circulars dated 27/12/1995 issued by the Headquarter DG BSF vide letter No. 24/97/Pers/BSF dated 15/1/1998. Only those BSF personnel who had completed 20 years of service were eligible for pensionary benefits on resignation. Petitioner was regretted grant of pensionary benefits as he had not completed 20 years of qualifying service. The issue of sanction of pensionary benefits in the context of obtaining facts and circumstances has been settled by Hon. Supreme Court in its judgment dated 30th March, 2001 in Civil Appeal No. 6166/1999, 2121 of 2000 and 2491-92 of 2000 (Union of India v. Rakesh Kumar and Ors.). Hon. Supreme Court has held that BSF personnel cannot be held entitled for pension who have resigned under Rule 19 of Rules of 1969 before completion of minimum qualifying service for grant of pensionary benefits under the Central Civil Service (Pension) Rules, 1972 and only such BSF personnel are entitled for pensionary benefits who have completed 20 years of qualifying service under the pension rules. Therefore, such BSF personnel who have resigned after completion of 10 years of service but before qualifying service of 20 years are not entitled to the pensionary benefits. In the instant case petitioner had completed 17 years 3 months 21 days of service at the time of resignation w.e.f. 15/4/1994 but since he had not completed 20 years of qualifying service, therefore was not held entitled for the pensionary benefits. Further as substantial number of BSF personnels who had resigned from services were permitted to resign under Rule 19 of Rules of 1969 but were not granted pensionary benefits, under such circumstances, with the authority of circular No. 13/19/1/98-Rectt/

BSF/1367-1667 dated 17/10/1998 with reference to Signal No. R/3408 dated 12/10/1998 where under such BSF personnels whose resignations were accepted after circular dated 27/12/1995 with pensionary benefit but were not granted the benefits were directed to joint back the duties in the force immediately. They were to rejoin on reinstatement of service and period of absence was to be treated as earned leave/half pay leave as due and treating the remaining period as leave without pay (EOL) as a special case. As petitioner did not fall under the aforesaid category as he resigned on 15/4/1994 prior to circular dated 27/12/1995, therefore, petitioner was not informed or called upon to join the service.

4. It is further submitted that in compliance of direction issued by this Court vide order dated 24/3/2006 rendered on Writ Petition No. 1538/2006 filed by the petitioner, respondents after due processing have forwarded the same vide UO No. Rule 19/30/2006 Rectt/BSF/16808 dated 24/8/2006 to the Ministry of Home Affairs (R&W) with the recommendations that BSF personnel who resigned before 27/12/1995 and later on, their pension were sanctioned but as per blanket order of the respondents, same was not released, may also be permitted to draw pension to avoid further litigation in such cases. However, the decision of GOI is awaited. It may take sometime being a policy matter. Hon. Supreme Court vide judgment dated 4/1/2006 in W.P. (Civil) No. 569/2001 (Raj Kumar and Ors. v. UOI) applying the principle of equity has ordered that such BSF personnel who have resigned prior to circular dated 27/12/1995 and were sanctioned/drawing the pension shall be permitted to draw pension. The case of Ex LNK Keshav Singh was explained to have different factual matrix inasmuch as his resignation has been accepted w.e.f. 30/11/1996 with pensionary benefits and pension was released in his favour. However, the same since was stopped; by force of the judgment of Hon. Apex Court dated 30/3/2001 in Union of India v. Rakesh Kumar, subsequently, the same was restarted and withheld amount was released to him on account of judgment passed by Hon. Apex Court dated 4/1/2006 in the case of Raj Kumar (supra). Further, in the light of directives issued by Hon. Apex Court in the case of Raj Kumar (supra), Ex. LNK Keshav Shing has been ordered to be reinducted (para 8 of return).

5. In para 9 of the return it is further reiterated that petitioner's appeal has been forwarded by the competent authority with recommendations seeking approval for grant of pensionary benefits to such similarly placed Ex. BSF Personnels and the same is pending consideration before the Ministry of Home Affairs. Necessary orders shall be passed on receipt of decision from the Ministry of Home Affairs.

6. With the aforesaid submissions, it is prayed that instant writ petition for the same relief in the light of fact that petitioner's appeal is still pending with the Ministry of Home Affairs, could not have been filed and is of no consequence. Accordingly, it is prayed that petition be dismissed.

7. Having heard learned counsel for the parties and after careful consideration of the documents on record, it appears that petitioner has tendered his resignation

while he had completed 17 years, 3 months and 21 days of service on 15/4/1994 and the same was accepted on 11/5/1994. Thereafter, full pension was sanctioned to him vide order dated 3/5/1997 by the competent authority. Thus, after three years of resignation, the aforesaid sanction for grant of full pension was passed and during this period on the one hand petitioner was out of employment and on the other hand pension was not released to him. Even after the sanction order, the petitioner was not released the pension and thereafter, there was no communication to the petitioner in this regard. It was only after petitioner's approaching this Court by filing W.P. No. 1538/2006, respondent lent their ears to his genuine bona fide grievance and turned down the pension for the reason that since he had not completed 20 years of qualifying service in terms of Pension Rules, 1972, petitioner could not be said to be entitled for the pensionary benefits. Besides, petitioner was also not permitted to rejoin the BSF force under the pretext that since he had resigned prior to 27/12/1995, therefore he cannot be permitted to rejoin. Therefore, petitioner has been subjected to typical hostility and depravity. He has been made to suffer for no fault on his part. In fact petitioner, case in the obtaining facts and circumstances of the case, deserves consideration on equitable grounds. Therefore, in the backdrop of the fact that petitioner's case for release of pensionary benefits is pending consideration before the Ministry of Home Affairs (R&W) as contended in para 8 and 9 of the return, it is considered apposite to dispose of this petition with following directions:--

"(i) in the light of averments made in para 8 and 9 of the return, respondent No. 1, Secretary, Ministry of Home Affairs shall be well advised to decide the pending case of the petitioner for release of pension and pensionary benefits bearing in mind the concept of justice, equity and good conscience and to need the ends of justice keeping in mind the cardinal principle of equality enshrined under Articles 14 and 16 of the Constitution of India;

(ii) respondents No. 2 and 3 shall also ensure that pending appeal/representation of the petitioner is processed expeditiously for decision to be rendered by respondent No. 1;

(iii) let aforesaid exercise be completed within a period of 3 months from the date of communication of certified copy of this order by the petitioner;

(iv) the decision so taken by the respondents, shall be duly communicated to the petitioner."

With the aforesaid directions and observations, petition stands disposed of.