
(2001) 12 DEL CK 0124
In the Delhi High Court
Case No : C.W. No. 1481 of 1996

O. Verghese

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Border Security Force Act, 1968 — Section 8
Border Security Force Rules, 1969 — Rule 19, 19(1)
Central Civil Services (Pension) Rules, 1972 — Rule 26, 26(4)

Citation : (2002) 4 AD 216 : (2002) 62 DRJ 143

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : R.P. Sharma, for the Appellant; Keshav Dayal and Sanjiv Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—In the present petition the petitioner claims for a declaration that the service rendered by the petitioner in the Border Security Force (B.S.F.) for the period from 18.9.1973 to 31.3.1982 i.e. prior to acceptance of his resignation, be treated as qualifying service for the purpose of pensionary benefits and also for quashing of the order of respondent No. 2 rejecting the aforesaid claim of the petitioner.

2. The petitioner joined the B.S.F. as a Constable, on 18.9.73. The petitioner was appointed as Assistant Sub-Inspector (Clerk) after having qualified in a competitive test and was appointed as S.I. (Steno) through departmental test, on 1.7.79. On 21.8.82, the petitioner sent a letter to the Inspector General, B.S.F. stating therein that he had been thinking in terms of leaving the service for settling certain personal/domestic affairs. It was further stated in the said letter that, Therefore, the said letter might be treated as his resignation letter requesting for acceptance of the said resignation from service on compassionate ground w.e.f. 31.8.82. In the said letter the subject of the letter was described

as " resignation from service." The aforesaid letter was processed by the respondents and the same was accepted and the petitioner was released from service on 31.8.82. After expiry of some years, thereafter, the petitioner submitted a request to allow him to re-join duties. Accepting the request of the petitioner the petitioner, as a case of fresh appointment, was sent for fresh medical examination in which he was found fit and accordingly was re-enlisted in the B.S.F. w.e.f. 23.9.86. In the said order issued by the respondents on 24.9.86 it was specifically and categorically mentioned that the petitioner is re-enlisted in the B.S.F. as S.I. (Steno) without benefit of his past service, in terms of Headquarters letter dt. 18.9.86. The petitioner accepted the said appointment along with the terms and conditions of his re-enlistment and joined duties and has been working in the aforesaid capacity. However, as the petitioner was not granted the benefit of the past service for all purposes including for the purpose of pensionary benefit, the petitioner submitted an application on 4.1.94 bringing to the notice of the respondents that while re-enlisting, the benefit of his past service had not been granted to him and in that view of the matter requested that his past service of 8 years 11 months and 12 days with the B.S.F. be counted for pension purpose only together with his present continuous service w.e.f. 23.9.86. The aforesaid prayer of the petitioner was considered by the competent authority and the same was rejected by order dt. 24.11.94 wherein it was stated by the respondents that re-enlisted of the petitioner in B.S.F. was on the specific condition that he would not get the benefit of his past service and, Therefore, no change in the appointment letter was possible at the belated stage. Being aggrieved by the aforesaid rejection, the petitioner has filed the present petition in this court.

3. Counsel appearing for the petitioner while supporting the contention in the writ petition, submitted that the petitioner had worked in the B.S.F., before submission of his resignation, for a period of 8 years 11 months and 12 days and the said period should be counted towards payment of pensionary benefit only. On support of the aforesaid contention, counsel relied upon the provision of Rule 19 of the B.S.F. Rules. He also placed reliance on the decisions of the Supreme Court in *Sushil Kumar Yadunath Jha Vs. Union of India (UOI) and Others*, *U.P. Awas Evam Vikas Parishad and Others Vs. Rajendra Bahadur Srivastava and Another*, *Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others*,

4. Counsel appearing for the respondents, however, submitted that the petitioner was released on 31.8.82 after acceptance of his resignation and he was re-enlisted in service, as a fresh appointment, on 24.9.86. It was further submitted that while ordering for appointment of the petitioner by order dt. 24.9.86, it was categorically stated that he was being re-enlisted with the B.S.F. without the benefit of his past service and, Therefore, the petitioner cannot claim for grant of the said benefit of his past service after a lapse of about 8 years. It was further submitted that the petitioner accepted the order of re-enlistment, without benefit of his past service, without any reservation or protest and having accepted the

said terms and conditions, the petitioner cannot turn-back and claim for the benefit of the aforesaid past service even for the purpose of his pensionary benefit. It was also submitted that even otherwise, the petitioner is not entitled to benefit of counting of his past service, in terms of Rule 26 of C.C.S. Pension Rules read with Rule 19 of the B.S.F. Rules. In view of the aforesaid contention, the counsel appearing for the respondents relied upon the decision of the Supreme Court in Union of India and Others Vs. Rakesh Kumar etc.,

5. By filing the application dt. 21.8.82, the petitioner expressed his desire to resign from service of the B.S.F. in order to enable him to settle certain personal/ domestic affairs and requested for acceptance of his resignation from service w.e.f. 31.8.82, on compassionate ground. As the respondent believed that compassionate ground was made out by the petitioner, the same was accepted by the respondent w.e.f. 31.8.82 and he was released from service w.e.f. 31.8.82. The petitioner thereafter, requested for his re-enlistment in the B.S.F. The aforesaid request of the petitioner was considered by the respondents as a fresh case of enlistment and he was sent for medical examination. As he was found medically fit, the petitioner was ordered to be re-enlisted in the B.S.F. w.e.f. 23.9.86. While ordering for said re-enlistment, it was categorically mentioned in the order that the aforesaid re-enlistment would be without benefit of his past service. The petitioner accepted the aforesaid order of re-enlistment without demur or protest and remained satisfied with the said terms and conditions for 8 long years. In 1994, he, for the first time, filed an application for grant of the aforesaid benefit of the past service for the purpose of pensionary benefits only as at that stage the petitioner desired to go on voluntary retirement, as stated by the counsel for the petitioner during the course of his arguments. It was stated that if he said period is not counted in favor of the petitioner, he does not satisfy the minimum period of service, which is required under the law.

6. Reference was made to Rule 19 of the B.S.F. Rules, which deals with the provisions of resignation in the B.S.F. It provides that the Central Government may, having regard to the special circumstances of any case, permit any officer of the Force to resign from the Force before the attainment of the age of retirement or before putting in such number of years of service as may be necessary under the Rules to be eligible for retirement. When the aforesaid Rule is read along with Section 8 of the B.S.F. Act, the following principle emerges, as laid down in the decision of Union of India v. Rakesh Kumar (supra):-

"A bare reading of Section 8 of the Act makes it clear that no member of BSF will have right to resign except with the prior permission in writing of the prescribed authority. The language is prohibitory and the member of BSF is not having liberty to resign from his appointment during the terms of his engagement, however, the prescribed authority may permit the member of BSF to resign in certain special circumstances. Rule 19 does not create any right to pension. It is intended to enable members of BSF to resign from the Force without attracting

any penal consequences. For that, Rule 19 provides that the Central Government having regard to the special circumstances of any case may permit any officer of the Force to resign before the attainment of the age of retirement or before putting in such number of years of service as may be necessary under the Rules to be eligible for retirement. Discretionary powers are given to the authority to accept or reject the resignation. Proviso to Rule 19 (1) empowers the Central Government, while granting permission to resign, to require the officer to refund to the Government such amount as would constitute the cost of training given to that officer. Further, if the officer is eligible to get pension or other retirement benefits, the Rules empowers the Government to make reduction in the pension or other retirement benefits."

7. It is an admitted position that the members of the B.S.F. are governed by the CCS (Pension) Rules. Rule 26 thereof provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the Government where service qualifies. In the present case, the petitioner resigned from service not to take up any other appointment but to sort out some of his personal/domestic problems. Therefore, on the facts and circumstances of the present case and in the light of the records available, the only irresistible conclusion that can be derived there from is that upon acceptance of the resignation of the petitioner, there was forfeiture of his past service, in terms of provisions of Rule 26 of CCS (Pension) Rules. It was also not a case of withdrawal of resignation in which case the provisions of Sub-rule 4 of Rule 26 would have been applicable. It was a case of fresh enlistment of the petitioner without benefit of the past service and, Therefore, Rule 26 (4) shall have no application to the case in hand, which was also an admitted position of the parties, as stated in the course of arguments. In my considered opinion, reliance on the decision of the Supreme Court in *Union of India v. Rakesh Kumar* (supra) is appropriate and the ratio of the said decision is squarely applicable to the facts of the present case as the said decision was rendered by the Supreme Court after noticing the provisions of Section 8 and Rule 19 of the BSF Act and Rules and also the provisions of Rule 26 of the CCS (Pension) Rules. In the said decision, it was held that if the rules are not providing for grant of pensionary benefits, it is for the authority to decide and frame appropriate rules but the court cannot direct payment of pension on the ground of so-called hardship likely go be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. It was also held that as a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement except in those cases where there are special provisions.

8. In the present case, counsel for the petitioner has fairly submitted during the course of his arguments that he has also not challenged in the writ petition and does not wish to challenge the terms of re-enlistment about loss of the benefit of past service, as void and unconscionable. In that view of the matter, the decision of the Supreme Court in *Sushil Kumar Yadunatha Jha* (supra) shall have no

application to the facts and circumstances of the present case.

9. I am bound by the recent decision of the Supreme Court rendered in the light of similar provisions, which are also under examination in the present case. Following the said recent decision of the Supreme Court, I hold that the petitioner is not entitled to the benefit of his past service for any purpose, including that of pensionary benefit. The petition has no merit and is dismissed accordingly.