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**(1993) 01 RAJ CK 0015**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 785 of 1986**

Pema Ram

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 14-01-1993

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 21, 226, 23

**Citation :** (1993) 1 RLW 327 : (1993) 1 WLC 153 : (1993) WLN 27

**Hon'ble Judges :** N.K. Jain, J; Jasraj Chopra, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

N.K. Jain, J.—By this writ petition, the petitioner seeks that the respondents be directed to treat the entire services rendered by him as qualifying service for the purpose of pension and also prayed that the provisions contained in Clause (b) of the second proviso to Rule 13 of the Rules of Central Civil Services (Pension) Rules, 1972 may be declared to be ultra vires to Articles 14, 16, 21 and 23 of the Constitution of India.

2. In brief the facts of the writ petition which are necessary to be noticed for the disposal of this writ petition are that the petitioner was recruited as Sepoy in B.S.F. Service on 9.10.1968, when he was 16 years and 9 months old. He was also posted on the Front during Indo-Pak hostilities in the year 1971 even before he attained the age of 18 years. The petitioner has moved an application for voluntary discharge and he was discharged from service on 15.5.1979 vide Anx. 1 dt. 16.5.1979 The petitioner made a representation on 27.12.1980 for grant of pension and he was informed vide communication dt. 28th Jan. 1981 (Anx. 2) that the services rendered by him upto the age of 18 years cannot be counted as qualifying services for pension as the service rendered by him till that time have to be treated as Boy Service, and the total qualifying period of service rendered does not qualify him for the purpose of pension. It is alleged that he made several representations Anx. 3 to 5 but they were of no avail. Hence, he has

approached this Court under Article 226 of the Constitution on 2.4.86. Notice to show cause was issued on 7.4.86.

3. Reply to the show cause notice was filed on 10.11.86 stating that the petitioner has not averred as to who gave him to understand that he is eligible for monthly pension. Then respondents have also stated that under Rule 21 of the CCS. (Pension) Rules, 1972 extra ordinary leave on medical grounds also does not qualify for pension and thus the petitioner has not rendered 10 years service. It is also stated that the qualifying service of the petitioner started from 11.1.1970 under Rule 13(b) of the Rules and as he did not complete qualifying service he is not entitled for any pension vide Rule 49 of the Rules of 1972. The respondents have also stated that the petitioner applied for voluntary retirement and the resignation entails forfeiture of past service as per Rule 26 of the C.C.S. (Pension) Rules. The respondents also filed a supplementary reply stating that the petitioner is misleading the court by stating that he sought voluntary retirement but as a matter of fact the petitioner tendered his resignation.

4. The petitioner moved an application to amend the writ petition on 28.2.87 whereby it was sought to challenge the provisions of Clause (b) of the second proviso to Rule 13 and it was prayed that it be declared ultra vires and in pursuance thereof an amended writ petition was also filed. The petitioner also moved an application for taking certain new facts into consideration and certain documents on record stating therein that the petitioner was called upon to report for preparation of papers of pension vide letter no. 425 Anx. 6 but vide letter dt. 27th March 1989 he has been informed that he is not entitled for grant of pension. No order was passed on both these applications.

5. We have heard learned Counsel for the parties and perused the relevant record.

6. Mr. Mridul, learned Counsel for the petitioner has submitted that a boy Sepoy also discharges the same duty as a major Sepoy and, so there is no justification for not treating Boy service rendered by the petitioner as qualifying service for pension. He has also submitted that the provisions contained in Clause (b) of second proviso to Rule 13 of the Central Civil Service (Pension) Rules, 1972 is ultra vires as it is clearly arbitrary as also discriminatory in nature. He has further submitted that Anx. Rule 1 is not a letter of resignation but it is a case of discharge, and denial of pension to the petitioner is hit by principle of promissory estoppel.

7. Mr. Choudhary, appearing on behalf of the Union of India has submitted that Rule 26 of the BSF Rules clearly provides forfeiture of past services in the case of resignation. He has also submitted that prior to attaining the age of 18 years, the services rendered by the petitioner as Sepoy cannot be taken into account in view of Rule 13(b) which is not discriminatory, arbitrary and ultra vires of the Constitution.

8. Undoubtedly, a government servant is entitled for pension as pension is a

retired benefit to which a government servant is entitled as of right on account of rendering his past services and more over the pension is one's right rather than a bounty and one is eligible for getting pension on superannuation or on voluntary retirement after completing required qualifying service.

9. In the instant case, the petitioner being an employee of the B.S.F., his case is governed by the provisions laid down in the C.C.S. (Pension) Rules, 1972. According to Rule 49 of the C.C.S. (Pension) Rules a government servant is entitled for pension after completing qualifying service of ten years. Admittedly, the petitioner whose date of birth is 1.11.1952 entered in the B.S.F. service as Sepoy on 9.10.68. The petitioner moved Anx. R/I dt. 8.5.79 in which the petitioner mentioned before the subject "for taking discharge" and further in the prayer clause he had requested that due to domestic reasons he may be discharged from service under the B.S.F. Act, which was his voluntary act. The respondents accepted the same on compassionate ground and as soon as his request was accepted under Rule 19 of the B.S.F. Rules, which empowers the Central Government in the special circumstances to permit any officer of the Force to resign from the Force before the attainment of the age of retirement. It results in forfeiture of his past services consequently he becomes disentitled to any pensionary benefits as per Rule 26 of the C.C.S. (Pension) Rules, 1972. In view of this legal position by mere mention of word discharge in this resignation letter the petitioner cannot claim that he took voluntary retirement and is entitled for pension because he has not been discharged. As a matter of fact lie applied for discharge and the same was accepted by the order dt. 12.5.79 under Rule 19 of the B.S.F. Rules, which in turn amounts to resignation from service and, therefore, even if the service rendered by the petitioner before attaining majority is counted which comes to 10 years 55days than 100 he is not entitled for any pension.

10. So far as the challenge to the vires of Rules 13(b) of the Rules of Central Civil Services (Pension) Rules, 1972 is concerned, these Rules have been framed by the Central Government keeping in view the mandatory provisions of the Contract Act. A perusal of Rule 13(b) clearly shows that it is based on sound principles of law which clearly debars the entry of any person in service before attaining the age of majority because a minor cannot enter into a contract of service and hence in our opinion the second proviso of Rule 13(b) is not arbitrary, discriminatory and violative of the Constitution particularly when the counsel for the petitioner has not been able to substantiate the sole ground of his challenge as to how the services rendered by the petitioner as minor (boy) before attaining majority can be equated with the other regular personnel of the B.S.f.

11. As regards the contention relating to principle of estoppel, it is settled that it does not apply against the statute. In the instant case, the petitioner was called upon by the respondents for preparation of pension papers but later on the pension was denied. In our opinion by mere asking the petitioner to report for

preparation of pension papers does not confer on him any right as to get it against the Rules. Denial of pension in such cases does not result in manifest injustice particularly when according to the B.S.F. Rules and as per the C.C.S. (Pension) Rules, 1972 the petitioner is not entitled for pension. Therefore, the principle of promissory estoppel cannot be pressed into service in such a case. It may not be out of place to mention here that pension was refused to him in the year 1981 whereas this writ petition has been filed after an inordinate delay of five years.

12. In the result, this writ petition has no force and it is hereby dismissed.