

(1999) 03 GAU CK 0051
In the Gauhati High Court
Case No : Civil Rule No. 914 of 1998

Siraj Ali (MD)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Border Security Force Rules, 1969 — Rule 19, 19(1)
Central Civil Services (Pension) Rules, 1972 — Rule 49(2)
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1999) 2 GLT 519

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : L. Sharat Sharma, for the Appellant; C. Komal Singh, Sr. C.G.S.C. and K. Kumar Singh, Addl. C.G.S.C., for the Respondent

Judgement

J.N. Sarma, J.—This is a hard case. A person having resigned from the service of Border Security Force(in short "BSF") is now making an application for pensionary benefits by invoking Rule 49(2)(b) of Central Civil Services Pension Rules which have been adopted by the BSF. That Rule 49(2)(b) is quoted below:

49(2) (b). In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than (rupees three hundred and seventy five) per mensem.

The brief facts are as follows:

2. The Petitioner joined the BSF on 11th March, 1983 as a constable and he served the BSF for about 13 years 6 months and thereafter because of his family problem he wanted to go on voluntary retirement vide Annexure-A/1 to the writ application. That Annexure-A/1 is quoted below:

To

The Commandant, 46 Bn. BSF

I. Nagar Jammu.

Subject: Requested to acceptance of voluntary resignation.

Respected Sir,

With due respect and humble submission 1 No. 83766006 N.K. Md. Siraj Ali of "D" Coy 46 Bn. BSF was enrolled in BSF during the M/O 3.3.83 and completed 13 years 6 months of qualifying service. My mother is very old and father is too aged and suffering from illness. He is unable to look after my domestic problem and land property.

My brother is away from my father and mother dully depended on me. My wife is not able to handle my family situation.

In view of above, I wish to discontinue my service and proceed on voluntary retirement under Rule 19 of BSF 1969 with all pensionary benefit.

You are therefore requested that may please accept my resignation with all pensionary benefit for which I shall be highly thankful to you for this act of kindness.

Thanking you,

3. A bare perusal of the application at Annexure-A/1 quoted above will show that application was filed under Rule 19 of BSF Rules, 1969. The relevant portion necessary for this case of Rule 19 is quoted below:

19. Resignation (1) 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;

Provided that while granting such permission the Central Government may:

(a) require the officer to refund to the Government such amount as would constitute the cost of training given to that officer; or

(b) make such reduction in the pension or other retirement benefits of the officer if so eligible as that Government may consider to be just and proper in the circumstances.

(2) The Central Government may accept the resignation under Sub-rule (1) with effect from such date as it may consider expedient:

Provided that it shall not be later than three months from the date of receipt of such resignation.

4. The Annexure-A/1 quoted above was accepted vide Annexure A/2 to the writ application. That is quoted below:

Office of the Commandant 46 BN BSF Indreswar Nagar(Jammu)....

No. 2064/Estt/46/96/10898-908 dt. 17th Sept. '93.

Order: Resignation tendered by No. 83766006 NK Mohd Siraj Ali of "D" Coy of this unit is hereby accepted with all pensionary benefits at his own request on extreme compassionate grounds w.e.f. 31.12.96(A/N) under BSF Rules, 1969.

2. He will be struck off strength from this unit w.e.f. 31.12.96(A/N). This has the approval of the Commandant on note sheet dated 13.9.96.

Sd/-Illegible (R.P. Singh) Dy. Comdt. DC BN HQ For Commandant.

5. It will be seen from Annexure-A/2 that this was accepted with all pensionary benefits. Thereafter, no pension was paid to him and a demand notice was issued vide Annexure-A/3. Even his leave encashment, gratuity etc. were also not paid. The pension was refused vide Annexure-A/5 and that is quoted below:

No. Pen/Hd/Clk/MSA/98 HQS 46 Bn BSF, Rampura PO: Fazilka Distt, Ferozepur(pb) Dated the 16th May,'98

To

Ex-NK Mohd Siraj Ali S/o Shri Mohd Abdul Hai Vill Sora Meyai Leikai PO Wangjing Distt-Thoubal (Manipur)

Sub: Non receipt of pension, DCRG, Leave encashment, payment of CGEGIS and commuted value of pension - legal notice thereof.

Shri K. Rabei Singh, Advocate, C/O L. Sharat Sharma Advocate has served legal notice on your behalf to this unit as well as to the Accounts Officer PAD, BSF, New Delhi regarding non payment of your dues mentioned in the subject cited above.

2. In this connection, it is to inform you that HQS, DG, BSF, New Delhi Vide their letter No. 24/1/97-pers/BSF dated 15 Jan. 98 has clearly communicated that BSF personnel are not eligible for pensionary benefits on their resignation from service after completion of less than 20 years qualifying service. However, as regards the payment of service gratuity, leave encashment and CGEGIS, the case for payment of the same is already under process with Accounts Officer, PAD, BSF (Pension-II Section) New Delhi and you will be apprised for the same on receipt of decision from PAD, BSF.

Sd/-Illegible (R.P. SINGH) DC OC BN HQ FOR COMANDANT

6. This Annexure-A/5 is dated 16.5.98. But earlier to it, vide Annexure-A/7 the following decision was taken:

No. 24/1/95-Pers/BSF Government of India Ministry of Home Affairs Directorate

General Border Security Force (Personnel Directorate) Block No. 10, 5th Floor
Keridriya Karyalaya Parisar Lodhi Road. New Delhi-03. Dated the 27th Dec. '95

To

All Frontier HQ BSF All SHQ BSF including DIG (HQ) New Delhi All Trg Institutions
TSU/Cenwosto/CSMT/Signal Regt/HQ Arty/STW/SRQ All Bns BSF All Arty Regts
BSF

Sub: Grant of pensionary benefits on resignation under Rule 19 of the BSF Rules,
1969.

Attention is invited to this HQ letter No. F-35 036/3178-Staff/BSF dated 04th
Nov. '91 conveying the decision of the Ministry of Home Affairs in the matter of
admissibility of pensionary benefits on acceptance of resignation under Rule 19
of the BSF Rules 1969.

2. In this connection the undersigned is directed to inform that matter was again
referred to the Government to review their decision in order to give pensionary
benefits to members of the BSF on tendering resignation under Rule 19 of the
BSF Rules, 1969. The Ministry of Home Affairs in consultation with the
Department of Pension and Pensioners Welfare has agreed to our proposal and
decided not to amend pension Rules for the BSF personnel are framed. The
Government has also agreed to our views that a member of the force is entitled
to get pensionary benefits on resignation under Rule 19 of the said Rules
provided he has put in requisite number of years of service and fulfils all other
eligibility conditions.

3. A number of Ex-BSF personnel have filed petitions in various courts of law
claiming for the grant of pension on their resignation from service under the
provisions of Rule 19 of the BSF Rules, 1969. Besides this a number of. notices u/
s 80 Code of CPC also being received in this regard.

4. Rule 19(1) of the BSF Rules, 1969 provides that the competent authority may,
having regard to special circumstances of a case, permit a member of the force
to resign from the Force before 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. The authority competent to grant such permission is
also empowered to make such reductions in the pension or other retirement
benefits of a member of the force, if so eligible lis it may consider just and
proper in the circumstances of the case.

5. In view, of the provisions containing in Rule 19 of the BSF Rules, 1969 as
pensioner in para 4 above and based on the approval of the MRA as per para 2
above, in future the authorities who accept the resignation of member of the
Force shall specify in the order the reduction to be made in the pension, if any,
as per the provisions contained in proviso (ii) to Rule 19(i) of the BSF Rules,
1969. In case no such reduction is specified in the order regarding acceptance of
resignation, it would imply that no reduction in the pension has been made.

6. In order to decide all pending cases including the ones which are presently under adjudication it is incumbent on all authorities to undertake a through review of all pending cases. For this purpose, cases of resignation accepted in respect of members of the Force, who have not been allowed pensionary benefits, will be reviewed and pass necessary orders within the shortest possible time limit. In this regard Frontier ISG and Heads of Trg Institutions will ensure that these instructions have been complied with by the Units/ Establishments under their administrative control.

On....(PNC TTRYEDI DEPUTY DIRECTOR (ERS) 27TH DEC" 95

7. It may be stated herein that Annexure-A/5 is a letter dated 16th May, 1998 and that is after that retirement of the Petitioner on 31.12.96 and in that order itself it was stated that he will be entitled to all pensionary benefits. If that would not have been passed stating that it is accepted with all pensionary benefits, perhaps, the Petitioner would not have left the service.

8. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless then are words in the Statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in the language which is fairly capable of either interpretation it ought to be constructed as prospective only. In the absence of any express provision or necessary intendment, the rule cannot be given retrospective effect except in the matter of procedure. By issuing Annexure-A/5 the authority now want to take away the rights of pension of the Petitioner. That cannot be done in as much as in the letter of acceptance it was stated that it is accepted with all pensionary benefits.

9. In view of that matter, this writ application is allowed and I direct that the authority in pursuance of Rule 49(2)(b) quoted above shall pay the pension to the Petitioner. The pension shall be computed within a period of 3 (three) months from the date of receipt of this order failing which the arrear amount of pension shall carry interest at the rate of 12% p.a. No costs.

10. I have heard Mr. L. Sharat Sarma, learned Counsel for Petitioner and Mr. C. Komal Singh, learned Sr. CGSC along with Mr. K. Kymar Singh, learned Addl. CGSC for Respondents.

11. This disposes of this writ application.