

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

SWP No. 1351/2006
IA No. 1664/2006

Pronounced on:- 19th 05.2020

Ram Kumar Sharma ...Petitioner(s)

Through: Mr. S. K. Anand, Advocate

vs.

Union of India and others ...Respondent(s)

Through: Mr. P. S. Chandel, CGSC

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

1. Petitioner seeks a direction in this petition for re-instatement in service and to allow him to resume his duties as L/Nayak the post on which he was serving, prior to his voluntarily retirement from service vide order dated 28.10.1997. He further seeks a direction to the respondent to treat him as on duty from 01.01.1998 till the date he joins the service alongwith all the consequential benefits
2. Briefly stated facts, which arise for consideration in this petition are, petitioner was appointed in Border Security Force as Constable on 23.03.1986. After serving the Force for 11 years and 06 months on 06.11.1997, he sought voluntary retirement from service. The resignation of the petitioner was accepted by the competent authority w.e.f 31.12.1997 with pensionary benefits as admissible. However, no pensionary benefit was sanctioned in his favour as he did not having the requisite period of qualifying service for grant of pension in terms of Civil Central Service (Pension) Rules 1972 read with Rule 19 of the BSF

Rules. Petitioner, thus, seeks his reinstatement in service in terms of circular dated 17.10.1998 and judgment of the Apex Court titled, '**Raj Kumar and others v. Union of India and another**', 2006 (1) SCC 737.

3. Respondents have objected to the claim of the petitioner on the ground that he does not have the requisite qualifying service of 20 years for being eligible to claim pension under Civil Central Service (Pension) Rules 1972 (hereinafter to be referred to as 'CCS (Pension) Rules'). It is further submitted that since the petitioner had sought voluntarily retirement on the ground of domestic problems and the same was accepted by the competent authority vide order dated 28.10.1997 w.e.f. 31.12.1997 A.N. He, therefore, now cannot turn around and seeks his reinstatement in the service.
4. Heard learned counsel for the parties.
5. The Central Civil Service Pension Rules provides 20 years qualifying service as eligibility to claim pension. Since Rule 19 of BSF does not itself create any purview and the same is regulated by Central Civil Service Pension Rules. Though under Rule 19 of the BSF Rules, the member of the force could resign in special circumstances with permission of the prescribed authority. The petitioner did not have the requisite qualifying service for being eligible for pensionary benefits.
6. The respondents, however, in accordance with instructions contained in FHQ BSF (Pers Dte) Letter dated 17 October, 1998 denied the petitioner to rejoin duty vide letter dated 15.10.1998, 25.10.1999, 01.06.1999 & 04.08.1999 stating that in case he does not join, he will not be granted any pensionary benefit. Since the petitioner did not join duty nor

informed the Btn. Headquarters despite notices, therefore, he was not entitled to grant of any pensionary relief.

7. Petitioner has placed reliance on Government order/Circular dated 27.12.1995 issued by the Department of Pension and Pensioners Welfare by which it was notified that members of Force who had resigned would be admissible to pensionary benefits provided he had put in requisite number of years and other eligibility conditions. This issue regarding admissibility of pension under Rule-19 of the BSF Rule came up for consideration before the Supreme Court in **Union of India Vs. Rakesh Kumar, (2001) 4 SCC 309** and it was held as under:-

16. On the basis of Rule 49, it has been contended that qualifying service for getting pension would be ten years. In our view, this submission is without any basis. Qualifying service is defined under Rule 3(q) to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules. Rule 13 provides that qualifying service by a government servant commences from the date from which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. This rule nowhere provides that qualifying service for getting pension is 10 years. On the contrary, there is specific provision that if a government servant retires before completing qualifying service of 10 years because of his attaining the age of compulsory retirement, he would not get pension but would get the amount of service gratuity calculated at the rate of half months emoluments for every completed six monthly period of qualifying service. In these appeals, we are not required to consider other conditions prescribed for qualifying service as it is admitted that respondent-members of the BSF have completed more than 10 years of qualifying service. Further clause 2(a) of Rule 49 specifically provides for grant of pension if a government servant retires after completing qualifying service of not less

than 33 years. The amount of pension is to be calculated fifty per cent of average emoluments subject to maximum provided therein. Clause 2(b) upon which much reliance is placed indicates that in case of a government servant retiring in accordance with the provisions of the Rules before completing qualifying service of 33 years, but after completing qualifying service of ten years, the 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 Rs.375/-per month. This would only mean that in case where government servant retires on superannuation i.e. the age of compulsory retirement as per service conditions or in accordance with the CCS (Pension) Rules, after completing 10 years of qualifying service, he would get pension which is to be calculated and quantified as provided under clause (2) of Rule 49. This clause would cover cases of retirement under Rules 35 and 36, that is, voluntary retirement after 20 years of qualifying service, compulsory retirement after prescribed age and such other cases as provided under the Rules. However, this has nothing to do with the quitting of service after tendering resignation. It is also to be stated that Rule 26 of CCS (Pension) Rules specifically 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. Hence, on the basis of Rule 49 member of BSF who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefit. There is no other provision in the CCS (Pension) Rules giving such benefit to such government service.

8. This issue of Government order/Circular dated 27.12.1995, and whether that the member of the Force is entitled to get pensionary benefit of resignation under Rule-19 of the said Rules, provided he has put in requisite number of years of service and fulfills all other eligibility conditions was considered after a number of writ petitions seeking issue of release of pension and being not giving an opportunity to join was

filed. The Hon'ble Apex Court in **Raj Kumar vs. Union of India's case (Supra)** while considering these issues and Government Circular divided the cases in the following categories:-

“12. That the personnel of the Force who otherwise were not eligible to pensionary benefits under the CSS (Pension) Rules, 1972 are not conferred with this benefit as a result of the misreading of Rule 19(1) of the BSF rules as put forward in the GO/Circular dated 27-12-1995 is beyond cavil from the judgment of this Court in Rakesh Kumar. This position is also not contested by the learned counsel appearing for the petitioners in the different matters before us. The learned counsel, however, submitted that the mistaken interpretation of Rule 19 of the BSF Rules was on the part of the authorities for which the petitioners were not to blame. It is urged on behalf of the petitioners that due to this mistaken impression, which the petitioners also shared, because of what was conveyed by the GO/Circular dated 27-12-1995, a large number of personnel were prompted to resign from service in the hope of getting pensionary benefits; that some of them had actually been sanctioned pensionary benefits, and were in receipt thereof at the time when the judgment of this Court in Rakesh Kumar was pronounced.

“18. 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 re-induction. 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. “

9. The petitioner's case squarely falls in category (B)(ii) and those persons who had retired subsequent to 1996 were not sanctioned pension and but when were directed to report for reinduction in service and they are not

reported by virtue of Circular dated 17.10.1998. Since the petitioner had also not reported for service despite repeated communication, therefore, was not entitled to any relief.

10. This apart the petitioner had earlier also approached this Court by filing SWP No. 2175/2002 seeking the following relief:

“It is, therefore, prayed that by issuance of writ of Mandamus, respondents may kindly be directed to pay him pension admissible under rules from 31.12.1997, the date when his resignation has been accepted with pensionary benefits; or in the alternative by issuance of writ of Mandamus commanding upon the respondents to take the petitioner back in service with all consequential benefits and with continuity in service.”

11. Though in the present petition, he has stated that he was never called by the respondents in compliance to Circular dated 17.10.1998 but this statement itself is false in view of the admission of the petitioner in earlier SWP 2175/2002 in para 10, in which he has stated on affidavit as under :-

10) That since the petitioner had to resign from his post after completing 11 years and 8 months, due to compelling reasons as he had some domestic problems at home and the situation had not improved by that time, so he could not join his duty back despite receiving the communication dated August 4, 1999 and made personal request to respondent-2 to pay him admissible pension under Rules, but nothing substantial has been done till date.

12. Thus, it is clear that the petitioner's case squarely falls in category B(ii) in terms of the judgment in Raj Kumar (Supra) who was directed to

report and who despite receiving the same as per his own submission has not joined, thus, is not entitled to any relief of re-instatement or pensionary benefit. The petitioner is, thus, not entitled to any relief as has not approached this Court with clean hands and also on merits in view of the law laid down in Raj Kumar & ors. vs. Union of India & anr.

13. In view of the above, there is no merit in this petition and the same is, accordingly, **dismissed** alongwith connected IA.

(Sindhu Sharma)
Judge

Jammu
19th .05.2020
SUNIL-II

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes