

CASE NO.:
Writ Petition (civil) 569 of 2001

PETITIONER:
Raj Kumar and Ors.

RESPONDENT:
Union of India and Anr.

DATE OF JUDGMENT: 04/01/2006

BENCH:
B.N. Srikrishna & C.K. Thakker

JUDGMENT:
JUDGMENT

SRIKRISHNA, J.

The writ petitions in this group arise from the same set of facts and seek the same relief. They can conveniently be disposed of by a common judgment.

For the purpose of facts, it would be sufficient to refer to the facts narrated in Writ Petition (C) No. 569/2001. The petitioners were holding different posts under the Border Security Force (hereinafter referred to as "the Force"), constituted under The Border Security Force Act, 1968 (hereinafter referred to as "the BSF Act"). The First Respondent is the Union of India in the Ministry of Home Affairs and the Second Respondent is the Director General of the Border Security Force.

On 27.12.1995 the Second Respondent with the approval of the First Respondent and in consultation with the Department of Pension and Pensioners' Welfare issued a G.O./Circular notifying that the Government had agreed with their 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 fulfills all other eligibility conditions." (The Rules referred to are the Border Security Force Rules, 1969, hereinafter referred to as "the BSF Rules") This G.O./Circular provided that the competent authority may, "having regard to the 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 circular empowered the competent authority granting such permission "to make such reductions in the pension or other retirement benefits of a member of the Force, if so eligible,..." (emphasis added). The circular also advised the competent authority that in future while accepting the resignation of a member of the Force, the order should specify the reduction to be made in the pension, if any, as per the provisions contained in proviso (b) to Rule 19(1) of the BSF Rules, and further that failure to do so would imply that there was no reduction in the pension made.

The G.O./Circular dated 27.12.1995 was interpreted by the authorities to mean that any member of the Force could resign with the permission of the competent authority, even before completing the qualifying service for pension and would be eligible for pension under Rule 19(1) of the BSF Rules. This circular appears to have been issued on the basis of some judgments of the High Courts, and the clarifications issued by the Department of Pension and Pensioners' Welfare, Government of India under the mistaken impression that Rule 19 of the BSF Rules was concerned with entitlement to pension. In response to the said circular, about 2209 personnel of the Force resigned under Rule 19 of the BSF Rules and their resignations were accepted. In the case of about 447 personnel of the Force, the pension amounts were released and they started drawing pensions.

The cases of about 1762 personnel of the Force were still pending sanction of the pension amounts.

In the meanwhile, it appears that the authority realised its mistake and took rectification action by a letter dated 15.01.1998 conveying the decision of the Director General of the Force, as follows:

"It is to inform you that DG BSF after careful consideration has now decided that all personnel who resigned under Rule 19 of the BSF Rules during 1996, 1997, 1998 with less than 20 years service under mistaken impression with pensionary benefits and not granted pension, to be taken back immediately.

2. The amount of GPF and other dues paid to you are required to be refunded.
3. You are directed to report to this HQ forthwith to continue in service.
4. This matter may be treated as urgent."

Further, on 17.10.1998 the Deputy Director (Personnel) issued a circular conveying that those personnel whose resignations had been accepted after the circular dated 27.12.1995 under Rule 19 of the BSF Rules under mistaken impression of their entitlement to pensionary benefits but who had not yet been granted pension, should be called back to rejoin immediately. It was conveyed that in their cases the period of absence would be treated as an Earned Leave/ Half Pay Leave as due and the remaining period as leave without pay (EOL) as a special case, but that such personnel would have to refund the GPF and other dues paid to them. They would, however, retain their seniority. Individual Registered/AD letters were sent to all such persons whose resignation had been accepted pursuant to circular dated 27.12.1995 conveying the aforesaid decision of the Director General, BSF. This circular in terms stated that if a member of the Force was not interested to rejoin the Force, he would not be entitled to any pension. Initially the first cut-off date for rejoining was 30.4.1999, which was later extended up to 30.6.1999 and, finally, up to 31.8.1999.

Pursuant to the aforesaid circular of 17.10.1998, out of 1762 personnel recalled, 1065 personnel reported for work and they were allowed to rejoin the service subject to the conditions stipulated in the said circular. About 697 personnel, however, did not rejoin the service and the pensionary benefits payable to them were stopped.

About 69 personnel who had less than 20 years qualifying service and who had resigned from the year 1979 onwards had also been sanctioned pension under Rule 19 of the BSF Rules even before the issuance of the circular dated 27.12.1995. About 19 personnel had been sanctioned the pensionary benefits under Rule 19 of the BSF Rules, pursuant to the directions given by some High Court orders.

Some of the personnel who had been permitted to resign under Rule 19 of the BSF Rules prior to the circular dated 27.12.1995, who did not have the qualifying service for pension, sought pensionary benefits by placing reliance on the circular dated 27.12.1995. As the authorities did not concede their right, they moved the High Court for relief. Three such cases came up to this Court and were decided by this Court in its judgment in Union of India and Ors. v. Rakesh Kumar and Ors., in Civil Appeal No. 6166/1999 along with Civil Appeal Nos. 2121/2000 and 2491-92/2001 decided on 30.3.2001 reported in (2001) 4 SCC 309. The controversy with regard to the entitlement to pension of BSF personnel resigning under Rule 19 of the BSF Rules before completion of the minimum length of qualifying service for eligibility for grant of pensionary benefits, was finally decided and put to rest. This Court held that entitlement to pension to BSF personnel did not arise on account of Rule 19 of the BSF Rules, but only under the provisions of the Central Civil Services (Pension) Rules, 1972. After a

detailed analysis of the provisions of the BSF Act and the BSF Rules, the relevant provisions of the CCS (Pension) Rules, 1972 and the provisions of the G.O./Circular dated 27.12.1995 this Court held, (vide Paragraph 19) thus:

"Reading the aforesaid G.O. as a whole, it nowhere reveals Government's intention to confer any additional pensionary benefit to the members of the BSF who retired before completing the requisite qualifying service as provided under the CCS (Pension) Rules. It neither supplements nor substitutes the statutory rules. The G.O. read with Rule 19 of the BSF Rules would only mean that in case of resignation and its acceptance by the competent authorities, the member of BSF would be entitled to get pensionary benefits if he is otherwise eligible for getting the same under the CCS (Pension) Rules and to that extent Rule 26 which provides for forfeiture of service on resignation would not be applicable." (emphasis added)

Further, this Court observed, vide Paragraphs 20 and 21, thus:

"No person can claim any right on the basis of decision which is de hors the statutory rules nor there can be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship."

"Respondents who were permitted to resign from service under Rule 19 of the BSF Rules before the attainment of the age of retirement or before putting such number of years of service, as may be necessary under the Rules, to be eligible for retirement are not entitled to get any pension under any of the provisions under CCS (Pension) Rules. Rule 49 only prescribes the procedure for calculation and quantification of pension amount. The G.O. dated 27.12.1995 does not confer any additional right of pension on the BSF employees."

Thus, with this authority of the Court, the doubts, misgivings and misinterpretation of Rule 19(1) of the BSF Rules were finally cleared. It is in the light of the law laid down by this Court in Rakesh Kumar (supra) that we will have to decide if the writ petitioners before us are entitled to any relief.

That the personnel of the Force who otherwise were not eligible to pensionary benefits under the CCS (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 G.O./Circular dated 27.12.1995 is beyond cavil from the judgment of this Court in Rakesh Kumar (supra). 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 G.O./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 (supra) was pronounced.

It is also contended on behalf of the petitioners that in the cases of the BSF personnel who had resigned before the circular dated 27.12.1995, some as early as in 1980 and had been sanctioned pension by the authorities under Rule 19 of the BSF Rules, as special cases, even though they had not completed 20 years' service; after the judgment in Rakesh Kumar (supra) was pronounced, the authorities have stopped the pension payments though enjoyed by the concerned BSF personnel for long periods. Doing so is entirely unjust and iniquitous, according to the appellants. The petitioners further urged that, though a large number of personnel had returned to duty after complying with the conditions stipulated in circular

dated 17.10.1998, in the cases where pension had been sanctioned, they were prevented from coming back to duty as a result of individual letters dated 31.10.1998 by which it was stated that personnel already in receipt of pension would not be re-inducted into service. However, even in such cases the pension has been stopped pursuant to the judgment in Rakesh Kumar (supra). Counsel urged that this has resulted in double jeopardy in such cases, as the personnel concerned lost their service as well as pensionary benefit.

We are unable to accept the contention urged on behalf of the petitioners that the confusion with regard to the interpretation of Rule 19 of BSF Rules was cleared only as a result of the judgment in Rakesh Kumar (supra). Even before Rakesh Kumar (supra) was decided, way back in the year 1998 itself, the authorities seemed to have realised their mistake as evidenced by the letter dated 15.01.1998 followed by the circular dated 17.10.1998. Rakesh Kumar (supra) was decided only in the year 2001, almost 3 years later. Such of the BSF personnel who had resigned in the hope of getting pensionary benefits, although not eligible for pension under the CCS Pension Rules 1972, had been given the opportunity of getting back into service by virtue of the circular dated 17.10.1998. Despite the deadline for reporting being extended from 30.04.1999 to 31.08.1999, about 697 personnel had failed to avail of the opportunity of returning to service. There cannot be any equity in favour of those that failed to avail of the opportunity of rejoining service. If any of them failed to take advantage of the offer for re-induction into service, they have only themselves to thank. In such cases, obviously, there cannot be any relief granted in the present writ petitions, contrary to the law declared by Rakesh Kumar (supra).

There is no doubt that the position in law is that declared in Rakesh Kumar (supra) viz. that Rule 19 of the BSF Rules does not grant any right to pension in cases where pension is not payable under the CCS Rules 1972. Thus there is no question of this Court directing payment of pension to persons who are otherwise ineligible under the CCS Pension Rules 1972. The contention raised in all these petitions on the question of law must necessarily fail in the light of the clear pronouncement in Rakesh Kumar (supra).

Learned counsel referred to Union of India and Ors. v. Lt. Col. P.S. Bhargava and Praduman Kumar Jain v. Union of India and Anr. 2. After perusal, we find that they are not of any help to us in deciding the issue before us. The issue before us arises out of the terms of Rule 19(1) of the BSF Rules and the provisions of the CCS (Pension) Rules, 1972 and has, in fact been squarely decided in Rakesh Kumar (supra).

We find that the cases before us can be divided into the following categories:

(A) Pre-circular:

Personnel who resigned and were granted pension for special reasons, even prior to the circular dated 27.12.1995

(B) Post-circular:

Personnel who resigned pursuant to the circular dated 27.12.1995. These persons can be further divided into two sub-categories:-

(i) Personnel who retired in 1996, were sanctioned pension and were therefore asked vide letters dated 31.10.1998 not to report for re-induction. Their pension has been stopped pursuant to the judgment in Rakesh Kumar (supra). These persons can be further divided into two sub-categories:-

(a) those who are in a position to be re-inducted into service even

now

(b) those who cannot be re-inducted into the service as a result of being age-barred or due to being medically or physically unfit.

(ii) Those who retired subsequent to 1996, were not sanctioned pension, and were directed to report for re-induction in to service or to forfeit pension benefits by virtue of the circular dated 17.10.1998 and the individual letters.

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.

We have made the aforesaid directions in exercise of our powers under Article 142 of the Constitution in order to do complete justice to a section of the personnel who would otherwise be placed in an inequitable situation for which the authorities are also partly to blame. It is open to this Court to mould the relief by safeguarding the interest of the parties even while declaring the law. The paramount consideration in such cases should be to ensure that there is no injustice caused (see in this connection Deb Narayan Shyam and Ors. v. State of W.B. and Ors³ and State of Bihar and Ors. v. Kameshwar Prasad Singh and Otrs.,⁴ Barring this limited relief no other relief is due to the petitioners before us. Subject to the aforesaid limited relief all the petitions are dismissed.