

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

ORDER

(1) Mohan Ram Vs. **UOI & Ors.**

S.B. CIVIL WRIT PETITION NO. 4083/2006

(2) Idan Singh Vs. **UOI & ors.**

S.B.CIVIL WRIT PETITION NO. 4257/2006

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Date of Order :: 30th June 2008.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.G.R.Punia with Mr.Y.P.Khileree for the petitioner in CWP No.4083/2006

Dr.P.S.Bhati for the petitioner in CWP No.4257/2006

Mr.V.K.Mathur with Mr.M.S.Godara for the respondents

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BY THE COURT:

By way of these petitions for writ, the petitioners seek to challenge the orders passed by the competent authorities on their representations as made in pursuance of the directions issued by this Court in their earlier writ petitions. For similarity of background facts these two petitions (CWP Nos. 4083/2006 and 4257/2006) have been heard together and are taken up for disposal by this common order; however, as shall be noticed hereafter, there remains

dissimilarity on crucial facts in relation to the two writ petitioners and hence, their individual cases have been dealt with separately.

Background facts, relevant provisions, and the decisions of the Hon'ble Supreme Court

Profitable it shall be to notice at the outset the relevant statutory provisions and the decisions of the Hon'ble Supreme Court that govern the fundamentals of the issues involved with the background facts that run common to both the petitions. Section 8 of the Border of Security Force Act, 1968 and Rule 19(1) of the Border of Security Force Rules, 1972 ('the BSF Rules') relevant for the present purpose read as under:-

“Section 8. Resignation and withdrawal from the post.-

No member of the Force shall be at liberty,-

- (a) to resign his appointment during the term of his engagement; or
- (b) to withdraw himself from all or any of the duties of his appointment,

except with the previous permission in writing of the prescribed authority.”

“Rule 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 just and proper in the circumstances

... ”

On the question of grant of pensionary benefits to a member of Force on his resignation under the aforesaid Rule 19 of the BSF Rules, the Director General of the Border Security Force (BSF) proceeded to issue a Government Order/Circular on 27.12.1995 with the approval of the Union of India and in consultation with the Department of Pension and Pensioner's Welfare notifying that a member of BSF would be entitled to get pensionary benefits on resignation under the said Rule 19 provided he had put in requisite number of years of service and fulfilled other eligibility conditions. This Circular also provided that the competent authority may, under special circumstances of a case, permit a member of BSF to resign before attainment of the age of retirement or before putting in requisite number of years of service as may be necessary under the Rules to be eligible for retirement; and that the competent authority was empowered to make such reduction in the pension or other retirement benefits of a member of BSF, if so eligible, as it may consider just and proper in the circumstances of the case. This Circular was taken to mean that any such member of BSF 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.

In response to the said Circular, 2209 personnel did resign under Rule 19 of the BSF Rules and their resignations were accepted. After such resignations, in 447 cases, the pension amounts were released whereas the cases of about 1762 personnel were pending sanction of the pension. In the meanwhile, realising the mistake, a letter dated 15.01.1998 came to be issued by the concerned authority conveying the decision of the Director General, BSF that all such personnel who had resigned under Rule 19 of the BSF Rules during the years 1996, 1997, and 1998 with less than 20 years' service under mistaken impression with pensionary benefits and were not granted pension, be taken back immediately and that the amount of GPF and other dues paid were to be refunded. Further, on 17.10.1998, the Deputy Director (Personnel) issued a Circular conveying that those personnel whose resignations had been accepted after the said Circular dated 27-12-1995 and under mistaken impression of their entitlement to pensionary benefits but who had not yet been granted pension, should be called back to rejoin immediately; and that in their cases, the period of absence would be treated as an earned leave/half pay leave as due and the remaining as leave without pay as a special case but such personnel shall have to refund GPF and other dues paid to them; however, they

would retain their seniority. This Circular also stated that if a member of the Force was not interested to rejoin, he would not be entitled to any pension. Individual communication were sent to all such persons whose resignations had been accepted pursuant to the Circular dated 27.12.1995; and initially the first cut-off date for rejoining was 30.04.1999, which was later extended up to 30.06.1999 and, finally, up to 31.08.1999

Pursuant to the aforesaid Circular, out of 1762 personnel recalled, 1065 reported back and they were allowed to rejoin the service subject to the conditions stipulated; and about 697 personnel did not rejoin the service and the pensionary benefits payable to them were stopped. However, about 19 personnel had been sanctioned the pensionary benefits under Rule 19, pursuant to the directions given by some High Courts; and there was another category of about 69 personnel who had less than 20 years' qualifying service and who had resigned from the year 1979 onwards and had been sanctioned pension under Rule 19 even before issuance of the said Circular dated 27.12.1995.

The decision in Union of India v. Rakesh Kumar

The said Circular/GO dated 27.12.1995 came to be considered by the Hon'ble Supreme Court in the case of Union of India v. Rakesh Kumar: (2001) 4 SCC 309 wherein the question arose as to whether the members of BSF resigning under Rule 19 after serving

for ten or more years but less than 20 years were entitled to pensionary benefit; and one of the contentions of the respondents before the Hon'ble Supreme Court was that by the said GO dated 27.12.1995, the Union of India had interpreted Rule 19 of BSF Rules to imply that in case of acceptance of resignation of an employee after a lapse of 10 years of service, he is entitled to get the pension. While rejecting such contention of the respondents, the Hon'ble Apex Court specifically held that pensionary entitlement depends only upon eligibility as per the Central Civil Services (Pension) Rules. The Hon'ble Supreme Court said,-

“...The GO 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....”

The Hon'ble Supreme Court found that the persons who were permitted to resign under Rule 19 before the age of retirement or before putting in requisite number of years of service, were not entitled to get any pension under CCS (Pension) Rules. The Hon'ble Court held,-

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

“22. In the result, there is no substance in the contention of the learned counsel for the respondents that on the basis of Rule 49 of CCS (Pension) rules or on the basis of the GO, the respondents who have retired after completing qualifying service of 10 years but before completing

qualifying service of 20 years by voluntary retirement, are entitled to get pensionary benefits. The 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 the CCS (Pension) Rules. Rule 49 only prescribes the procedure for calculation and quantification of the pension amount. The GO dated 27-12-1995 does not confer any additional right of pension on BSF employees.”

The decision in Raj Kumar v. Union of India

Thereafter, several writ petitions having variety of fact situations were filed before the Hon’ble Supreme Court by the affected personnel who had resigned before or after the said Circular dated 27.12.1995. It was submitted before the Hon’ble Supreme Court that the mistaken interpretation of Rule 19 was on the part of the authorities for which the petitioners were not to blame; that due to the mistaken impression that was shared by the petitioners too, a large number of personnel were prompted to resign from service in the hope of getting pensionary benefits and some of them had actually been sanctioned such benefits, and were in receipt thereof at the time when the judgment in Rakesh Kumar’s case (supra) was pronounced; that the BSF personnel who had resigned before the Circular dated 27-12-1995 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 but after the Judgment in Rakesh Kumar, the authorities had stopped the pension

payments though enjoyed by the personnel concerned for long periods. It was also urged that, though a large number of personnel had returned to duty after complying with the conditions stipulated in the 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 reinducted into service however, even in such cases, the pension had been stopped pursuant to the Judgment in Rakesh Kumar that has resulted in double jeopardy, as the personnel concerned lost their service as well as pensionary benefit.

Rejecting the submissions made on behalf of the personnel, the Hon'ble Supreme Court, while deciding such batch of petitions in its decision in Raj Kumar v. Union of India: (2006) 1 SCC 737 held , -

“14. 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 the BSF Rules was cleared only as a result of the judgment in Rakesh Kumar. Even before Rakesh Kumar was decided, way back in the year 1998 itself, the authorities seemed to have realised their mistake as evidenced by the letter dated 15-1-1998 followed by the circular dated 17-10-1998. Rakesh Kumar 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 30-4-1999 to 31-8-1999, 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 reinduction 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.

(underlining supplied for emphasis)

Thereafter, the Hon'ble Supreme Court categorized the cases before it as follows:

“17. 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 letter dated 31-10-1998 not to report for reinduction. Their pension has been stopped pursuant to the judgment in Rakesh Kumar. These persons can be further divided into two sub-categories:

(a) those who are in a position to be reinducted into service even now; and
 (b) those who cannot be reinducted 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 reinduction into service or to forfeit pension benefits by virtue of the circular dated 17-10-1998 and the individual letters.”

At this stage, apposite it is to point out that the petitioners before this Court in these writ petitions are the personnel who did resign in the wake of the Circular dated 27.12.1995 in the year 1997; and were not sanctioned their pension; hence, only the category B(ii) supra shall be relevant in these petitions; and hence, the directions issued by the Hon'ble Supreme Court, albeit under Article 142 of the

Constitution of India, only in relation to the said category B(ii) are noticed hereunder:-

“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 reinduction 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.

...”

In the backdrop of the aforesaid position of the facts and the law, the individual cases of the present two petitioners could be considered. It may be pointed out that this being third round of litigation for both the petitioners, the records relating to the former writ petitions, being relevant for the present purpose, have been requisitioned and examined; and salient features from such petitions shall also be referred hereafter.

The case of Mohan Ram (CWP No. 4083/2006)

In the case of Mohan Ram, the petitioner joined BSF on 03.06.1986 and resigned, under Rule 19 of the BSF Rules and in terms of the said Circular dated 27.12.1995, and his resignation was accepted under the communication dated 12.03.1997 (Annex.1) with effect from 31.03.1997, i.e., after his putting in 10 years 9 months and 27 days of service. The communication dated 12.03.1997 stated about full pensionary benefits, but the petitioner having not been

granted such pensionary benefits, made a representation dated 24.02.1998 (Annex.3) for grant of pensionary benefits that was replied on 06.03.1998 (Annex.4) in the manner that the personnel whose resignation had been accepted under Rule 19 were not entitled for any pensionary benefits and they will not be re-appointed in BSF. The petitioner again made a representation on 06.03.1998 (Annex.5) stating his difficulties and stating that had there not been the proposition available per Rule 19, he would not have submitted such resignation. The said representation was turned down under the communication dated 20.03.1998 (Annex.6) reiterating inadmissibility of pension and further stating that no case shall be considered for re-appointment after the incumbent himself resigned.

Aggrieved by the aforesaid communications, on 21.04.1998, the petitioner filed a writ petition to this Court being S. B. Civil Writ Petition No. 1344/1998. While maintaining that he was entitled to pension per Rule 19 and further submitting that if he was not paid the pensionary benefit, the acceptance of his resignation was void and non-est, the petitioner prayed for the reliefs that the said communications dated 06.03.1998 and 20.03.1998 be declared illegal and the respondents be directed to grant pensionary benefits; and, in the alternative, the petitioner prayed that the respondents be directed to treat him in service and he be allowed all the benefits of continuity in service. The respondents filed a reply to this writ

petition on 08.10.1998 maintaining that for having not put in 20 years of qualifying service, the petitioner was not entitled for pensionary benefits.

On 15.10.1998, the respondents addressed a communication to the petitioner to rejoin the service and to report by 16.12.1998 at the Force Headquarters at Mopat Shillong (Annex.7). However, the matter remained pending in the said writ petition; and it appears that such an order issued to the petitioner was not immediately brought to the notice of this Court by either of the parties. While the said writ petition was pending with other matter of the like nature, the Hon'ble Supreme Court delivered the Judgment in Rakesh Kumar's case (supra) on 30.03.2001 and thereafter, such writ petitions were considered by this Court. A case of Baksa Ram (CWP No. 4302/1998) was decided on 25.04.2001 wherein this Court noticed the ratio of Rakesh Kumar and held that the petition was liable to be dismissed but then, noticed the fact that there was a stay operating in favour of the said petitioner, and, in the interest of justice, directed the said petitioner to make a representation and the authorities were requested to consider the case of the said petitioner for taking him back in service in accordance with Rules and also in pursuance of the order calling him back in service and to determine as to how to treat the interregnum.

Thereafter, on 26.04.2001, the petitioner Mohan Ram's writ petition (CWP No.1344/1998) was also decided by this Court in the light of the said decision in Baksa Ram's case with the following order (Annex. 8):-

"The controversy involved in this case is squarely covered by the decision rendered by this Court in Baksa Ram v. Union of India & ors. S.B.C. Writ Pet. No.4302/98 decided on 25.4.2001 and the petition deserves to be disposed of accordingly.

Thus, the respondents are requested to consider the case of the petitioner for taking him back in service in accordance with Rules and also in pursuance of the order calling him back in service, if he is not otherwise ineligible/unsuitable. The authority shall further determine as to how it shall treat the interragnum period strictly in accordance with law.

With the aforesaid observations, the petition is disposed of. No order as to costs."

The petitioner's case is that he sent a copy of the said order with his letter dated 07.05.2001 (Annex.9); then he reported to the concerned battalion at its base office at Pantha Chowk, Sri Nagar on 11.06.2001 (Annex.10) and thereafter proceeded at the location of the battalion on 12.06.2001. According to the petitioner, he requested the Commandant to allow him to rejoin but, on being not allowed to join, he made a request and was allowed to accompany the convoy from Kupwada to Jammu under the letter dated 16.06.2001 (Annex. 11). The petitioner has further averred that upon his falling ill while at the location of the battalion at Kupwada, he

was treated by the BSF doctor on 19.06.2001 (prescription slip Annex.12). The petitioner was, thereafter, informed by the communication dated 13.08.2001 (Annex.13) that his matter had been sent to the headquarter for necessary orders.

The petitioner then received a communication dated 11.12.2003 (Annex.14) that he cannot be allowed to join. The petitioner again addressed representations on 04.02.2004 and 31.03.2004 (Annex.15) pointing out his adverse conditions wherefor he could not join earlier and requested for relief. The petitioner was, however, informed by the communication dated 11.05.2004 (Annex.16) that there was no such rule in BSF whereunder he might be taken back on duty after a lapse of about six years; and he was requested not to enter into correspondence over again. The petitioner has pointed out a fact that another similarly situated person Hajari Ram was indeed allowed to join under the communication dated 03.08.2004 (Annex.17) in pursuance of the orders of this Court.

The petitioner thereafter filed another writ petition to this Court on 01.10.2004, being S. B. Civil Writ Petition No. 5750/2004. The said writ petition, with other writ petitions, including that of the other petitioner Idan Singh, was decided on 17.02.2006 (Annex.19). By that time, the Hon'ble Supreme Court had delivered the Judgment in Raj Kumar's case (*supra*) on 04.01.2006. Noticing the said decision in Raj Kumar, this Court disposed of the writ petitions

including that of the present petitioner with the following directions as per the consensus of the parties:-

"Learned counsel for the parties have agreed for disposal of the petitions suggesting that the cases of the petitioners do not fall within the ambit of sub-para (A) of para no.17 of the Raj Kumar's judgment delivered in (2006) 1 SCC 737. The dispute raised by the other side is that some of the petitioners were recalled by the respondents and they have not joined whereas some of the petitioners have joined on recalling. Therefore, the Supreme Court has distinguished the facts and categorized the cases. Accordingly, as agreed by learned counsel for the parties, the petitions are disposed of in the following terms:-

1. The petitioners shall file a representation indicating their all claims for pension before the respondent D.G. BSF within a period of two weeks from the date of receipt of the certified copy of this order by the respondents.
2. The respondents shall take notice of the judgment of Raj Kumar's case (supra) and passed a fresh speaking order in individual case keeping in view the facts of the individual case. This exercise shall be done by the respondents within a period of four months from the date they received certified copy of this order by the petitioners. The disposal of the representation shall also be conveyed by the respondents to the petitioners."

In pursuance to the directions so issued by this Court, the petitioner made another representation on 04.03.2006 (Annex. 20) and again made a request to allow him to rejoin. The representation so made has been rejected by the respondents with the observations that his case comes under category B(ii) i.e., where pension was not granted to him but he was given number of chances to join the Force but he did not report for service. Hence, according to the

respondents, the petitioner was neither entitled for re-instatement nor for pensionary benefits. The relevant part of the communication so issued by the respondents on the representation of the petitioner on 24.06.2006 (Annex. 21) reads as under:-

“Refer to your representation dated 04/03/2006 addressed to the DG BSF regarding the re-instatement in BSF on the implementation of court order dated 17/02/2006 passed in CWP No.5750/2004 filed by Ex-LNK Mohan Ram of 62 BN BSF v/s UOI and others before Hon'ble Court of Judicature for Rajasthan at Jodhpur.

2. Competent Authority has examined the case in details, as per the Supreme Court Judgment dated 04/01/2006 in WP(C) No.569/2001 filed by Ex-LNK Raj Kumar v/s UOI, your case comes under category B(ii) i.e. pension was not granted to you but you were given numbers of chances to come and join the force but you did not report for service. Hence, you are neither entitled for re-instatement nor for pensionary benefits.

3. The case is hereby disposed off as per the above Supreme Court Judgment.”

Assailing the said communication, it is contended on behalf of the petitioner that the respondents have not considered the matter in pursuance of and in conformity with the writ issued on 26.04.2001 and the case of the petitioner that he did report for joining but was not taken on duty has not been given due consideration. On the other hand, justifying the said communication dated 24.06.2006, it is contended on behalf of the respondents that the petitioner did not turn up to join duties even after repeated communications and hence is not entitled to any relief. However, it is maintained that while waiting for disposal of his representation after passing of the order

dated 26.04.2001, the petitioner of his own reached Pantha Chowk on 11.06.2001 but at the relevant time, the representation of the petitioner dated 07.05.2001 being under consideration and decision having not been received, the petitioner could not have been permitted to join.

It may be pointed out that an order dated 28.08.2001 in disposal of the petitioner's representation made after the decision of the said CWP No. 1344/1998 has later been placed on record; and it is made out therefrom that the authority concerned had been of the view that the petitioner was given repeated opportunities to rejoin which he failed to avail of; and the persons who had applied to rejoin after the cut off date i.e., 31.08.1999 were not permitted to do so.

Having given a thoughtful consideration to the entire matter, this Court does not feel satisfied with the manner of dealing with the matter of the present petitioner by the respondents; and the impugned communication dated 24.06.2006 does not satisfy the requirements of an objective decision on representation after taking into comprehension all the relevant facts and circumstances.

First and foremost significant fact is that the petitioner Mohan Ram had filed the first writ petition (CWP No 1344/1998) even before issuance of the letter dated 15.10.1998 (Annex.7) asking him to report for rejoining; and the case of the petitioner in the said writ

petition had been specific that he may either be allowed pension as ordered while accepting his resignation or be taken back in service.

Even when the said letter was issued to the petitioner on 15.10.1998 and if it be assumed that subsequent communications were also issued for rejoining, the matter nevertheless was sub-judice at the relevant time before this Court; and such facts were not specifically brought to the notice to the Court that the petitioner had been repeated with the communications to join back. Then, the writ issued by this Court on 26.04.2001 enjoined upon the authorities to take objective decision on the petitioner's representation and to decide on the question of treatment of interregnum too. The petitioner did make representation on 07.05.2001 and did, indisputably, report for duty on 11.06.2001.

There was no reason that the authorities took unnecessary longer time to decide upon the representation that was immediately made by the petitioner after the decision in CWP No. 1344/1998 and further when he reported for duty within reasonable time. Thereafter, when the petitioner again approached this Court, by the order dated 17.02.2006, the authorities were again required to consider his case objectively.

However, the impugned communication dated 24.06.2006 issued in disposal of the petitioner's representation dated 04.03.2006 remains too sketchy and it is but apparent that the fact situation of

this case has not been taken into comprehension by the authorities and merely a reference to paragraph B(ii) of the decision in Raj Kumar has been considered enough to snap-shut the matter without appreciating that the petitioner's was a case of the matter being sub-judice when the propositions of rejoining were being considered and operated by the authorities. Prior to the communication dated 15.10.1998, the petitioner was in fact not only declined the pension but was further informed that he shall not be permitted to rejoin. The respondent could not have ignored the fact that in the first writ petition (CWP No. 1344/1998) itself, even before they asked him to rejoin, the petitioner himself had asked for the alternative relief of rejoining if at all pension was not to be allowed to him.

In the given fact situation, the case of the petitioner Mohan Ram, even when somewhat similar to the aforesaid sub-paragraph B (ii) in Raj Kumar, yet cannot be placed as identical to and at par with the incumbents answering to the said sub-paragraph B(ii)i.e., the persons who had not joined despite opportunity. The relevant distinguishing facts as noticed above cannot be ignored. The record is replete with the facts, and all the surrounding circumstances indicate, that the petitioner Mohan Ram had always been interested in rejoining; and it is apparent that the authorities concerned have not appreciated the facts available on record and so also the features peculiar to his case.

Then, the petitioner has pointed out another significant fact that a similarly placed incumbent Hajari Ram was indeed permitted to join in the year 2004 in the wake of a similar writ issued by this Court. The case of the petitioner is required to be considered objectively and with reference to all the relevant aspects.

In the aforesaid view of the matter, as the case of the petitioner Mohan Ram deserves but has not received due consideration, this Court is constrained to set aside the order passed on his representation and to direct the authorities to decide his case dispassionately and objectively after taking into comprehension all the facts of the case and all the relevant circumstances; and keeping in view the writs already issued in this case.

The case of Idan Singh (CWP No. 4257/2006)

Though the petitioner Idan Singh has joined the issue with the other petitioner Mohan Ram; and in the past also his petitions were decided as if similar and akin to the other petitions; and herein too the petitioner Idan Singh has assailed the communication issued on his representation made in pursuance of the order dated 17.02.2006; and it is contented on behalf of this petitioner that the respondents have acted in arbitrary and whimsical manner in denying him the pensionary benefits and so also denying him reinduction when the petitioner went to join, however, a close look at the fact situation make out an entirely different case at its roots; and this Court is

opinion of this petitioner answers to the description of such personnel who have chosen not to rejoin and who were never interested in rejoining and who, as observed by the Hon'ble Supreme Court in Raj Kumar, have to thank themselves.

The said petitioner Idan Singh joined BSF on 03.05.1986 and resigned, under Rule 19 of the BSF Rules and in terms of the said Circular dated 27.12.1995, and his resignation was accepted under the communication dated 11.06.1997 (filed in his first writ petition, CWP No. 3275/1999, as Annexure-1) with effect from 31.07.1997, i.e., after his putting in 11 years 2 months and 28 days of service. The communication dated 11.06.1997 stated about full pensionary benefits, as per his entitlement.

However, initially, the petitioner Idan Singh's case had not been that he requested for pensionary benefits or else for rejoining as had been the case of Mohan Ram; and, on the contrary, it was the BSF that issued him the communications asking to rejoin.

The petitioner has taken the averments in the present writ petition to the effect that after receiving the letter dated 14.10.1998 (filed in this writ petition as Annexure-3), he made representations requesting the respondents to grant him pension from the date of his retirement; and that in response to the representations made, the respondents addressed a communication dated 03.06.1999 (filed as Annexure-4 in this writ petition) directing him to rejoin the service

before 30.06.1999. The petitioner has further averred in this writ petition that in response to the communication dated 03.06.1999 he went for rejoining but the respondents did not take him back in service without reason or justification and orally refused. The petitioner has filed documents as Annexure-5 in this writ petition, an undated receipt of SHQ BSF Barmer (ORS Mess) of casual diet and a prescription slip from OPD Sector BSF Hospital, Barmer and, according to the petitioner, these documents prove his presence at the office of the respondents. The petitioner has submitted that thereafter he filed writ petition No.3275/1999 that was disposed of on 26.04.2001.

A perusal of the record of CWP No.3275/1999 brings out the position different on material facts. The said writ petition was filed only 30.08.1999, that is, after the said communications and the alleged attempt for rejoining, as suggested in this writ petition. The crucial aspect of the matter is that there had not been a single word in the said first writ petition if at all the petitioner had responded to the call for rejoining. Contrarily, and significantly, the said writ petition was preferred with reference to the another communication dated 27.11.1998 (filed in the said first writ petition as Annexure-4) whereby the petitioner was asked to rejoin before 20.12.1998 and was informed that GPF amount would be recovered in easy installments if he was unable to pay in one installment. While stating

himself being aggrieved and dissatisfied with the communication dated 27.11.1998 asking him to rejoin, the petitioner maintained in the said writ petition that he could not have been asked to rejoin nor the respondents could deprive him of pensionary benefits and that the rules nowhere envisage that a person discharged could be called back on duty. That rejoining was not the proposition of the petitioner at all is amply clear from the following averments in the said CWP No.3275/1999:-

"7- That the petitioner after getting discharged from the service under the provisions of rule 19 of the Rules of 1969 by the competent authority, has settled his life in private job. Now, he has managed the things according to the need of the family circumstances and has got his life settled.

8- That on one fine morning, it was a bolt from the blue to know that the petitioner has been directed to join his duties on 30-10-1998. Thereafter, another letter dated 27-11-1998 was also issued to the petitioner to join the duties before 20-12-1998.....".

In the said writ petition, the petitioner repeatedly asserted in the grounds that once his resignation had been accepted, it was not open for the respondents to call him back on duty; that the respondents having passed the order accepting his resignation, were not entitled to declare him ineligible for pension; and that after discharging a personnel under Rule 19 of the Rules of 1969, there was no provision under the said Rules to call a person back on duty. Further, the relief as claimed in the said writ petition quells the doubt, if any, about the stand of the petitioner; and it is crystal clear

that the petitioner had been claiming only and only the pensionary benefits. The petitioner prayed in the said writ petition as under:-

"i) that by an appropriate writ, order or direction, the impugned order dated 27-11-98 (Annexure-4) any other order qua petitioner may kindly be quashed and set aside with all consequential benefits accrued to him due to discharge from service.

ii) by an appropriate writ, order or direction, the respondents may kindly be directed to give and continue all the pensionary benefits with interest @ 18% per annum, and they may kindly be restrained from recovery of GPF amount.

iii) any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

iv) writ petition may kindly be allowed with costs."

The frame of the said writ petition and the averments taken therein bring out the significant features that the averment as taken by the petitioner later, that in pursuance to the communication dated 03.06.1999 he went to join, is conspicuously missing in the said writ petition filed on 30.08.1999 and then, rejoicing was not the case of the petitioner in the said writ petition at all. On the contrary, the petitioner seriously questioned the very authority of the respondents to call him back on duty.

The respondents have clearly pointed out in their reply that the petitioner had been in receipt of the communications for rejoicing and in fact did make applications on 17.12.1998 and

29.04.1999 (Annex.R/2 and R/3 as filed in the present writ petition) whereby the petitioner stated his inability to join by the date given due to urgent domestic work and stated a later date when he would rejoin. Again, the significant fact remains that the petitioner avoided stating even such facts in the earlier writ petition. The only idea of the petitioner had been of seeking pensionary benefits and whenever the directions for rejoining were issued, the petitioner simply avoided the same.

The slips filed as Annexure-5 in this writ petition from the Mess and OPD could hardly be taken in proof of this petitioner's attempt to rejoin. The facts that the petitioner, an Ex-BSF personnel, was allowed to have a diet in the Mess and was prescribed medicines for ailment by the BSF doctors in OPD, do not lead to an inference that he made any attempt to rejoin; and no documentary evidence is otherwise available on record that would show that the petitioner ever reported for joining.

The said first writ petition as filed by the petitioner claiming only the relief of pensionary benefits of course got clubbed with the group of cases including that of Baksa Ram and Mohan Ram; and the said writ petition was also decided on 26.04.2001 with the identical order as made in Mohan Ram's writ petition as reproduced hereinbefore. The petitioner has, of course, made averments that after passing of the aforesaid order dated 26.04.2001, he approached

the respondents and made representation and requested them to take him back in service and, according to the petitioner, the respondents turned blind eye to his request. However, no such representation has been placed on record and the respondents have emphatically denied the petitioner having made any such representation in pursuance of the order of this Court. However, it seems that another representation was made by the petitioner for grant of pension that was declined by the communication dated 21.01.2003 (Annex.6). The petitioner thereafter made a representation on 14.09.2004 (Annex.7), now of course, making a request either to grant pension or to reinstate him in service.

Then, according to the petitioner, for inaction of the respondents, he filed another writ petition to this Court bearing No.169/2005. This second writ petition of the petitioner Idan Singh also got clubbed in the group of cases and was decided by common order dated 17.02.2006 with the same directions as have been reproduced hereinbefore while dealing with the case of Mohan Ram.

Same directions as made in the order dated 17.02.2006 being applicable to the petitioner; he too made an undated representation (Annex.8). The petitioner again made some reference to the facts that he had asked for release of pension and then went to the Department for rejoining but was not taken back in service; however,

the prayer as made in the said representation (Annex.8) deserves to be noticed and is reproduced verbatim,-

"It is therefore, humbly and respectfully prayed that this appeal may kindly be allowed and the order dt. 17.2.2006 passed by the Hon'ble High Court for releasing the pension to me as per the law."

Whatever one could gather from the expression aforesaid, it is but certain that rejoining had not been the prayer; and even the title of the representation so made by the petitioner Idan Singh after passing of the order dated 17.02.2006 had been "APPEAL FOR GRANTING OF PENSION AS PER HON'BLE HIGH COURT ORDER DATED 17-02-2006".

Taking an overall view of the matter, this Court is clearly of opinion that rejoining had never been the proposition of the petitioner Idan Singh and his emphasis had been for release of the pensionary benefits. Once it is found that the petitioner was not interested in rejoining at all; and never came out clearly with his prayer for rejoining, it is but apparent that the case of the petitioner Idan Singh stands away and apart from the case of the other petitioner Mohan Ram, who had right from beginning been requesting either to allow him pensionary benefits or to take him back on duty; and who did file the first writ petition even before he was given the option to rejoin.

The petitioner Idan Singh obviously stands in the class of personnel who consciously exercised their option of not rejoining.

As held by the Hon'ble Apex Court in Raj Kumar's case (supra) there is no equity in favour of those that failed to avail of the opportunity of rejoining service; and if anyone failed to take advantage of the offer for reinduction into service, he has only himself to thank. The petitioner Idan Singh's case precisely falls in such category of persons to whom no relief can be granted contrary to the law declared in Rakesh Kumar. Later attempts on the part of the petitioner Idan Singh suggesting as if he intended to join could only be rejected as afterthought.

The authorities have examined his representation in detail and have assigned cogent reasons for rejecting the same. It has been specifically pointed out that petitioner Idan Singh was given repeated opportunities to rejoin but he failed to avail the chances. In the overall circumstances of the case, the order so passed on his representation on 08.06.2006 (Annex.9) cannot be said to be unjustified or improper. Thus, the petitioner Idan Singh is not entitled for any relief and his writ petition deserves to be dismissed.

Conclusions:

As a result of the aforesaid,

- (i) CWP No. 4083/2006: Mohan Ram v. Union of India & Ors. is allowed to the extent indicated above; the impugned communication dated 24.06.2006 is set aside; and the representation made by the

petitioner stands restored for re-consideration by the authorities that shall be decided, as early as possible, preferably within two months from today, keeping in view the observations made above and after affording an opportunity of hearing to the petitioner;

(ii) CWP No. 4257/2006: Idan Singh v. Union of India & Ors. is dismissed.

(iii) Parties are left to bear their own costs in both the petitions.

(DINESH MAHESHWARI),J.

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