UNION OF INDIA AND ORS.

v.

RAKESH KUMAR

MARCH 30, 2001

[M.B. SHAH AND K.G. BALAKRISHNAN, JJ.]

Service Law :

Border Security Force Rules, 1969 : Rule 19.

Pension—Member of BSF—Entitlement to—On resignation—Member of BSF resigned from his post after serving more than ten years but less than 20 years—Held : Grant of pension to members of BSF are governed by CCS (Pension) Rules—A person who has resigned after more than 10 years of qualifying service but less than 20 years is not entitled to pensionary benefits—Rule 19 also does not make any provision for grant of pensionary benefits to such member—Hence, such member not entitled to pensionary benefits—Border Security Force Act, 1968, S. 8—Central Civil Services (Pension) Rules, 1972. R. 48-A.

Constitution of India, 1950 :

Article 14—Pension—Payment of—To some persons not entitled—Persons similarly situated—Entitlement to—Held : Court cannot direct something, by issuance of an appropriate writ, which is contrary to statutory Rules—Article 14 has no application in such cases—A mistake should not be perpetuated by direction of court—Further, court cannot direct payment of pension on the ground of so-called hardship.

Administrative Law :

Administrative Instructions—Scope and ambit of—Held : Administrative instructions cannot amend or substitute statutory Rules—But if Rules are silent on a particular point, gaps can be filled up by administrative instructions not inconsistent with the Rules.

Words and Phrases :

"Qualifying service"—Meaning of—In the context of R. 3(q) of the Border Security Force Rules, 1969.

A The respondent joined the Border Security Force (BSF) as a constable and continued to serve till he submitted his resignation after rendering 12 years and 8 months of service. His resignation was accepted under Rule 19 of the Border Security Force Rules, 1969. The appellant issued a Government Order (G.O.) conveying its decision in the matter of admissibility of pensionary benefits on acceptance of resignation under Rule 19 of the B Rules. On the basis of the aforesaid G.O., the competent authority allowed full pensionary benefits to the respondent as admissible under the Rules. However, as the pension was not released the respondent filed a writ petition before the High Court, which was allowed. Hence this appeal.

C On behalf of the appellant it was contended that neither the Border Security Act, 1968 nor the Rules made provision for grant of pension; and that grant of pension to a member of the BSF was governed by the Central Civil Services (Pension) Rules 1972.

On behalf of the respondent it was contended that under Rule 19 in D the case of acceptance of resignation of an employee after 10 years of service he was entitled to get pension; that under Rule 49 the qualifying service for getting pension was 10 years; that on the basis of the G.O. a number of persons were granted pensionary benefits even though they had not completed 20 years of service and, therefore, the pensionary benefits E granted to the respondent should not be disturbed; and that the appellant was estopped from contending that the respondent was not entitled to get pensionary benefits in view of the G.O.

The following question arose before this Court :

F Whether members of BSF who have resigned from their posts after serving for ten or more years but less than 20 years are entitled to pension/ pensionary benefits under the relevant provisions of the Border Security Force Act, 1968 and the Border Security Force Rules, 1969 or the Central Civil Services (Pension) Rules, 1972?

G Allowing the appeal, the Court

HELD : 1. A bare reading of Section 8 of the Border Security Act, 1968 makes it clear that no member of the Border Security Force (BSF) will have the right to resign except with prior permission in writing of the H prescribed authority. The language is prohibitory and the member of the

BSF is not having liberty to resign from his appointment during the term of his engagement. However, the prescribed authority may permit the member of the BSF to resign in certain special circumstances. Rule 19 of the Border Security Force Rules, 1969 does not create any right to pension. It is intended to enable members of BSF to resign from the force without attracting any penal consequences. [935-E]

2.1. The Scheme of the said Rules provides that normally a government servant is entitled to get pensionary benefits after he retires at the age of superannuation. [936-B]

The contention of the respondent that under Rule 49 of the Rules, the qualifying service for getting pension would be ten years 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 nowhere provides that qualifying service for getting pension is 10 years. On the contrary, there is a 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 to service gratuity. [939-A-C]

2.2. Rule 49(2)(b) of the Rules 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 Rule 49(2)(a) and in no case, the amount of pension shall be less than a certain amount. Hence, on the basis of Rule 49 a 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 benefits. There is no other provision in the Central Civil Services (Pension) Rules, 1972 giving such benefits to such government servants. [939-E; 940-A]

3. There is no substance in the contention of the respondents that in view of the Government Order (G.O.) or specific orders passed by the competent authority granting pension, appellants are estopped from contending that such officers are not entitled to get pensionary benefits. The G.O. does not confer any additional benefit. Even in the order the competent authority has stated that the respondent would get pensionary ben-

A efits as admissible under the Rules. Under the Rules, the respondent is not entitled to get such benefits. [943-D]

4. For grant of pension the members of the BSF are governed by CCS (Pension) Rules. CCS (Pension) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule
B 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. Therefore, by erroneous interpretation of the Rules if pensionary benefits were granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable that by an appropriate
C writ, the Court should direct something, which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of a 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.
D If Rules are not providing for grant for pensionary benefits it is for the authority to decide and frame appropriate Rules, but Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining
E the age of compulsory retirement except in those cases where there are special provisions. [943-F-H; 944-A-B]

5. The Government cannot amend or substitute statutory Rules by administrative instructions, but if the Rules are silent on any particular point, the Government can fill up the gaps and supplement the
F Rules by issuing instructions not inconsistent with the Rules. The Government can also confer certain benefits on its employees by administrative order. [940-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6166 of 1999.

G From the Judgment and Order dated 20.4.99 of the Himachal Pradesh High Court in C.W.P. No. 761 of 1998.

WITH

Civil Appeal No. 2121 of 2000 and Civil Appeal Nos. 2491-92 of 2001.

H Mukul Rohtagi, Additional Solicitor General, Ms. B. Sunita Rao, Ms.

Halida Khatoon for D.S. Mehra and Ms. Sushma Suri (NP) for the Appellants. A

Javed Mahmud Rao, V.J. Francis and Jitender Mohan Sharma for the Respondents.

The Judgment of the Court was delivered by

B

SHAH, J. Leave granted in S.L.P.(C) Nos.16644-45 of 1999.

The question involved in these appeals is - whether members of BSF who have resigned from their posts after serving for ten or more years but less than 20 years are entitled to pension/pensionary benefits under the relevant provisions of the Border Security Force Act, 1968 (hereinafter C referred to as "the BSF Act") and the Border Security Force Rules, 1969 (hereinafter referred to as "the BSF Rules") or the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the CCS (Pension) Rules")?

Brief facts of Civil Appeal No. 6166 of 1991 are that - respondent filed Civil Writ Petition No.761 of 1998 before the High Court of Himachal D Pradesh praying for writ directing the appellants to forthwith release the pension due to the respondent w.e.f. 1st March, 1994 and for release of past arrears of pension with interest. It is the case of the respondent that he joined the Border Security Force (hereinafter referred to as 'BSF') as a constable on 15.1.1981 and continued to serve till he submitted his resignation on E 11.2.1994, after rendering 12 years and 8 months of service. His resignation was accepted on 1.3.1994 under Rule 19 of the BSF Rules.

Thereafter, the Government of India, Ministry of Home Affairs issued G.O. dated 27th December, 1995 conveying its decision to the Directorate General, B.S.F. (Personnel) in the matter of admissibility of pensionary F benefits on acceptance of resignation under Rule 19 of the Rules. The G.O. was passed to finalise the claims made by number of Ex. BSF personnel for getting the pensionary benefits on acceptance of their resignation under Rule 19. On the basis of the aforesaid G.O., respondent represented to the Inspector General, BSF on 2nd April, 1996 for grant of pensionary benefits. G Finally, after receipt of legal notice under Section 80 of CPC, the competent authority passed the following order No. 3563/(PF.RK)/97-Est.II/42328 on 3.5.1997:

"In partial modification of this office order No.3411/Estt.-II/94/ 239 dated 28th Feb., 1994 and as approved by Competent Authority, H

A No.810050310 Ex-Naik Rakesh Kumar of I of A, BSF Academy Tekanpur is hereby allowed *full pensionary benefits as admissible under rules* consequent upon his resignation from BSF service, which was accepted w.e.f. 1st March, 1994 (FN) Rule 19 of BSF Rules."

(Emphasis added)

B

However, as the pension was not released the respondent was required to approach the High Court. The High Court allowed the petition and directed the competent authority to quantify the pensionary benefits which the respondent was entitled to from the date of his retirement i.e., 1.3.1994. That C order is challenged in this appeal.

Similar directions are issued on 22nd July, 1999 by the High Court of Himachal Pradesh in Writ Petition No.783 of 1998 which are challenged in Civil Appeal No. 2121 of 2000.

D In Civil Appeal No._____of 2001 arising out of SLP (Civil) Nos.16644-45, it is the case of respondent P.K. Surendran Nair that he was enrolled in BSF in May, 1970. He resigned from the service and his resignation was accepted with effect from 24.1.1981 after completing more than 10-years of service. At that time pensionary benefits were not granted to him. He submitted representation for grant of pension. By order dated E 19.2.1997, competent authority sanctioned full pensionary benefits *as admissible under the rules* w.e.f. 24.1.1981. As the pensionary benefits were not released in favour of the respondent, he approached the High Court of Kerala by filing OP No.17228 of 1998 praying for a direction to the appellants to disburse pensionary benefits. The High Court by interim order dated 15.10.1998 F directed the appellants to disburse pensionary benefits to the respondent pending disposal of the writ petition. That order was challenged in W.A. No.2648 of 1998. After hearing the parties, by the impugned judgment and order dated 4.3.1999, the Division Bench dismissed the writ appeal by holding that the authority has sanctioned full pension for the service rendered G by the respondent in the BSF in accordance with Rule 19 of the BSF Rules and there cannot be any legal impediment for disbursing the same. Against that order, the present appeal is filed.

The learned Additional Solicitor General Mr. Rohtagi appearing for the Union of India submitted that the impugned orders passed by the High Courts H are erroneous as the same misinterpret Rule 19 of the BSF Rules. It is his

contention that neither the Act nor the rules make provision for grant of pension. The proviso to Rule 19 empowers the Government to impose two different penalties if it chooses to permit resignation. The two penalties provided in sub-clause are: (i) the officer is required to refund to the Government such amount as would constitute the cost of training given to that officer; or (ii) it may make such reduction in the pension or other retirement benefits of the officer "if so eligible" as the Government may consider to be just and proper in the circumstances. The grant of pension to the member of the BSF is governed by the CCS (Pension) Rules. It is his submission that in case resignation of member of the Force is accepted it would not mean that he has retired from service. Resignation would mean voluntary act of quitting the job/service and implies that employee though fit in all respects decides to quit and leave the service. As against this, retirement implies a tenure although it may not be a full tenure having completed in the job and thereafter employee leaves the service. Retirement can be at the age of superannuation, compulsory retirement or retirement on exigencies like becoming invalid etc. It is his submission that resignation of an employee would not mean that he has retired at the age of superannuation or there is premature retirement which may be compulsory or because of other exigencies and, therefore, there is no question of grant of any pension to the employee under the CCS (Pension) Rules.

The learned counsel appearing on behalf of respondents however submitted that Rule 19 is interpreted by the Central Government by issuing GO dated 27th December, 1995. It clarifies that in case of acceptance of resignation of an employee after lapse of 10 years of service he is entitled to get pension. May be that, competent authority may reduce some part of the pension under proviso to Rule 19 on resignation being accepted. In any case, appellants are estopped from contending that the respondents are not entitled to get pensionary benefits in view of the G.O.

In these matters, learned counsel for the parties accepted that for grant of pension members of the BSF are governed by the CCS (Pension) Rules. However, learned counsel for the respondents submitted that Pension Rules are subject to Rule 19 of the BSF Rules and, therefore, they are entitled to get pensionary benefits on the basis of GO issued by the Central Government as well as specific orders passed by the competent authority. It is also stated by the learned Additional Solicitor General that from 14.1.1998 proviso to Rule 19 stood deleted.

A For appreciating the contentions raised by the learned counsel for the parties it would be necessary to refer to Section 8 of the BSF Act and Rule 19 of the Rules which are as under:

> *"Section 8. - Resignation and withdrawal from the post.-No member of the Force shall be at liberty,-*
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> B
>
> (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
>
> C appointment,
>
> except with the previous permission in writing of the prescribed authority."
>
> *"Rule 19. - Resignation.* - (1) The Central Government may, having
>
> D 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
>
> E 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
>
> F
>
> (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
>
> G 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.
>
> (3) The Central Government *may refuse to permit* an officer to
>
> H resign-

(a) if an emergency has been declared in the country either due to internal disturbances or external aggression; or

(b) if it considers it to be inexpedient so to do in the interests of the discipline of the Force; or

(c) if the officer has specifically undertaken to serve for a specific period and such period has been not expired.

(4) The provisions of this rule shall apply to and in relation to Subordinate Officers and Enrolled Persons as they apply to and in relation to any officer of the Force and the powers vested in the Central Government under sub-rules (1) and (2) shall be exercised in the case of a Subordinate Officer by a Deputy Inspector-General and in the case of an Enrolled Person by a Commandant."

(Emphasis added)

Bare reading of Section 8 of the Act makes it clear that no member of the BSF will have right to resign except with prior permission in writing of the prescribed authority. The language is prohibitory and the member of the BSF is not having liberty to resign from his appointment during the term of his engagement, however, the prescribed authority may permit the member of the BSF to resign in certain special circumstances. Rule 19 does not create any right to pension. It is intended to enable members of BSF to resign from force without attracting any penal consequences. For that, Rule 19 provides that Central Government having regard to the special circumstances of any case may permit any officer of the force to resign 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. Discretionary powers are given to the authority to accept or reject the resignation. Proviso to Rule 19(1) empowers the Central Government, while granting permission to resign, to require the officer to refund to the Government such amount as would constitute the cost of training given to that officer. Further, if the officer is eligible to get pension or other retirement benefits, rules empower the Government to make reduction in the pension or other retirement benefits.

The next step is-once it is accepted that members of the BSF are governed by the CCS (Pension) Rules, then the question is whether a member

A is entitled to get pension on his resignation before compulsory age of retirement or 20 years of service or if he retires or is retired at the age of 30/33 years of qualifying service. The scheme of the said Rules provides that normally a government servant is entitled to get pensionary benefits after he retires at the age of superannuation. There are exceptions for grant of pensionary benefit in cases where government servant voluntarily retires after B completing 20 years of qualifying service and also retires after completing 30/33 years of qualifying service, invalid pension or compensate pension or on compassionate grounds etc. Chapter V deals with grant of pensions and the conditions for such grants. As per Rule 35 superannuation pension is to be granted to a government servant who retires on his attaining the age of C compulsory retirement. Retiring pension is further given to a government servant who retires or is retired in advance of age of compulsory retirement in accordance with the provisions of Rule 48 after completing 30 years of qualifying service or Rule 48-A of the CCS (Pension) Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations. Rule D 48- A provides for voluntary retirement after completion of 20 years qualifying service after giving three months notice in writing to the appointing authority and if such notice is accepted he would get retiring pension. Thereafter, Rule 49 provides for method of calculation of amount of pension to such government servant. Relevant parts of the CCS (Pension) Rules for grant of pension are as under: -

E

> *"35. Superannuation Pension* A superannuation *pension shall be granted to* a Government servant who is retired *on his attaining the age of compulsory retirement.*
>
> *36. Retiring Pension. A retiring pension shall be granted-*
>
> F
>
> (a) to a Government servant *who retires, or is retired,* in advance of the age of compulsory retirement in accordance with the provisions of Rule 48 or 48-A of these rules, or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations; and
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> G
>
> (b) to a Government servant who, on being declared surplus, opts for voluntary retirement in accordance with the provisions of Rule 29 of these rules.
>
> *48. Retirement on completion of 30 years' qualifying service.*

H

(1) At any time after a Government servant has completed *thirty years' qualifying service-* A

(a) he may retire from service, or

(b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension: B

Provided ...

C

48-A. Retirement on completion of 20 years' qualifying service.

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. D

Provided ..."

On behalf of respondents, heavy reliance is placed on Rule 49 which reads thus:

E

"*49. Amount of Pension.* (1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service. F

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees *per mensem.* G

(b) In case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying H

A 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*.

B (c) Notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

C (3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) ... ..."

D Aforesaid procedure under Rule 49, is for calculating and quantifying the amount of pension which a government servant is entitled to if he retires on superannuation or if he retires or is retired after completion of 30 or 33 years of service or voluntarily retires after completing 20 years of qualifying service and provides: -

E (a) If the qualifying service is less than 10 years, the government servant would not be entitled to get pension but he would be entitled to receive the amount of service gratuity.

(b) If he has completed qualifying service of not less than 33 years, the amount of pension is to be calculated at 50 per cent of the F average emoluments subject to the maximum provided therein.

(c) In case of government servant retiring before completing qualifying service of 33 years, but after completing qualifying service of 10 years, he would get pension which would be proportionate to the amount of pension admissible under clause G (a).

(d) The minimum amount of pension shall not be less than Rs. 375 per month.

(e) Invalid pension also shall not be less than the amount of family H pension admissible under sub-rule (2) of rule 54.

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

A 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 servants.

The learned counsel for the respondents however relied upon the G.O.
B dated 27.12.1995 issued by the Government and submitted that on the basis of the aforesaid G.O., the competent authority has passed an order granting pension and, therefore, the High Court was right in giving direction to the Government to release the pension. It is further submitted that after interpreting Rule 19 of the BSF Rules, the Government has power to grant pension
C to the member of BSF who is permitted to resign because of special circumstances. Special circumstances may be that the member might have become invalid to render service, so his resignation is accepted. It is also submitted that once the Government has issued administrative instructions which supplement existing Rules specifically for the members of the BSF, it cannot be said that the said G.O. is against the statutory rules and, therefore,
D it is not binding on the Government. For this purpose, reliance is placed on Rule 6 which reads thus:

> "*6. Case unprovided for.* - In regard to any matter not specifically provided for in these rules, it shall be lawful for the competent
E authority to do such thing or take such action as may be just and proper in the circumstances of the case."

As against this, the learned Additional Solicitor General submitted that G.O. nowhere provides that such members are entitled to pensionary benefits if they are not eligible. He submitted that if the interpretation of the rules
F given by the competent authority is against the statutory rules then it is not binding on the Government and any subsequent order based on such G.O. would be illegal.

In our view, there cannot be any doubt that Government cannot amend or substitute statutory rules by administrative instructions, but if the rules are
G silent on any particular point, the Government can fill up the gaps and supplement the rules by issuing instructions not inconsistent with the rules. Government also can confer certain benefits on its employees by administrative order. For finding out whether by the G.O. dated 27.12.1995 the Government has conferred certain benefits on the members of the BSF, we
H would refer to it as a whole, which is as under:

"To
All Frontier Border
All SHO BSF including DIG (HQ) New Delhi
All Trg. Institutions
TSU/Cenwosto/CSMT/Signal Regt./
HQ Arty/SIW/SRO
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. F35036/3/78-Staff/BSF/ dated 4th November, 1981 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 the matter was again referred to the Government to review their decision in order to give pensionary benefit 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 & Pensioners Welfare has agreed to our proposal and decided not to amend Rule 19 of the BSF Rules, 1969 till such time separate 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 fulfills 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 under Section 80 CPC are 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 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

A 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 as it may consider just and proper in the circumstances of the case.

B 5. In view of the provisions contained in Rule 19 of the BSF Rules, 1969 as mentioned in Para 4 above and based on the approval of the MHA as per para 2 above in future the authorities who accept the resignation of a member of the Force shall specify in the order the reduction to be made in the pension if any as per the provisions C contained in provision (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 D presently under adjudication it is incumbent on all authorities to undertake thorough 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 E Frontier is G and Heads of Trg. Institutions will ensure that these instructions have been complied with by the Units/Establishments under their administrative control."

The aforesaid G.O. makes it clear that there was a demand for grant of pensionary benefit on acceptance of the resignation under Rule 19 and that F demand was accepted by the Government. Paragraph 2 of the G.O. makes it clear that Government has agreed that member of the BSF is entitled to get pensionary benefits on resignation under Rule 19 provided he has put in requisite number of years of service and fulfils all other eligibility conditions. Paragraph only reiterates Rule 19. It also clarifies that authority competent G to grant permission to resign is also empowered to make reduction in pension if the member of the BSF is eligible to get such pension. Paragraph 5 provides that in future the competent authority who accepts the resignation would specify in order the reduction to be made in the pension if any and if no such reduction is specified in the order, it would imply that no reduction in the pension has been made. Under paragraph 6, directions are issued for pending H cases where resignation was accepted but pensionary benefits were not

allowed and provide that necessary orders should be passed within shortest possible time. Reading the aforesaid G.O. as a whole, it no where 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 the 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. Hence, there is no substance in the contention of the learned counsel for the respondents that in view of the G.O. or specific orders passed by the competent authority granting pension, appellants are estopped from contending that such officers are not entitled to get pensionary benefits. As stated above, the G.O. does not confer any additional benefit. Even the specific order which is quoted above in favour of Naik Rakesh Kumar, the authority has stated that he would get pensionary benefits as admissible under the Rules. Under the Rules, he is not entitled to get such benefits.

Learned counsel for the respondents submitted that on the basis of G.O., number of persons are granted pensionary benefits even though they have not completed 20 years of service, and, therefore, at this stage, Court should not interfere and see that the pensionary benefits granted to the respondents are not disturbed and are released as early as possible. In our view, for grant of pension the members of BSF are governed by CCS (Pension) Rules. CCS (Pension) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only provides that if a member of the force who resigns and to whom permission in writing is granted to resign then the authority granting such permission may reduce the pensionary benefits if he is eligible to get the pension. Therefore, by erroneous interpretation of the rules if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which

A 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. If rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement except in those cases where there are special provisions.

In the result, there is no substance in the contention of the learned C counsel for the respondents that on the basis of Rule 49 of the CCS (Pension) Rules or on the basis of G.O., 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. 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 D 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 E employees.

Hence, the aforesaid appeals are allowed and the impugned orders are set aside. There shall be no order as to costs.

V.S.S. Appeals allowed.