A UNION OF INDIA & ORS.

v.

MADHU E.V. & ANR.

(Civil Appeal Nos. 9647-9650 of 2003)

APRIL 26, 2012

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[R.M. LODHA AND H.L. GOKHALE, JJ.]

Border Security Force Rules, 1969 - r. 19 - Constables in Border Security Force (BSF) resigning from service on C *completion of 10 years of service - Constables allowed to resign with pensionary benefits u/r. 19 - Pensionary benefits - Entitlement to - Held: r. 19 does not entitle any pensionary benefits on resignation of its personnel - However, by virtue of G.O. dated December 27, 1995 read with r. 19 of Rules, a* D *member of BSF would be entitled to get pensionary benefits if he is otherwise eligible - Such personnel must satisfy eligibility under CCS (Pension) Rules which does not provide that a person who has resigned before completing 20 years of service is entitled to the pensionary benefits - On facts,* E *constables had resigned from BSF service immediately after completion of 10 years service, thus, not entitled to any pensionary benefits - Central Civil Services (Pension) Rules, 1972 - rr 26, 48-A and 49(2)(b).*

Respondents-constables in the Border Security F **Force (BSF) tendered their resignation on completion of 10 years service under Rule 19 of the Border Security Force Rules, 1969. Their resignation was accepted and it was provided that the respondent would be entitled to pensionary benefits. However, subsequently the** G **respondents were intimated that no pensionary benefits were admissible to them. The respondents filed writ petitions challenging the said communication. The Single Judge of the High Court held that when the petitioners**

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were allowed to resign with pensionary benefits under Rule 19 of the BSF Rules, then their claim for pension must be worked out under Rule 49(2)(b) of the CCS (Pension) Rules. The Single Judge allowed the writ petitions and directed the appellants to grant pension to the respondents in accordance with Rule 49(2)(b) of the CCS (Pension) Rules. The Division Bench of the High Court upheld the decision of the Single Judge. Therefore, the appellants filed the instant appeals.

Allowing the appeals, the Court

HELD: 1.1. Rule 19 of the Border Security Force Rules, 1969 does not entitle any pensionary benefits on resignation of its personnel. The pensionary benefits are not ordinarily available on resignation under Central Civil Services (Pension) Rules, 1972 since Rule 26 provides for forfeiture of service on resignation. However, by virtue of G.O. dated December 27, 1995 read with Rule 19 of BSF Rules, the member of BSF would be entitled to get pensionary benefits if he is otherwise eligible. Such personnel must, therefore, satisfy his eligibility under CCS (Pension) Rules. The CCS (Pension) Rules does not provide that a person who has resigned before completing 20 years of service is entitled to the pensionary benefits. Rule 49 only prescribes the procedure for calculation and quantification of pension amount and not the minimum qualifying service. [Para 12] [479-A-D]

1.2. In the instant case, the respondents had resigned from BSF service immediately after completion of 10 years service and, therefore, they are not entitled to any pensionary benefits. [Para 14] [479-E-F]

1.3. The view taken by the Single Judge of the High Court and judgment of the Division Bench of the High Court upholding the view taken by the Single Judge

A **cannot be upheld and are set aside. However, the amount of pension paid to the respondents, if any, would not be recovered. [Paras 13 and 15] [479-E-H]**

Ex-Naik Rakesh Kumar vs. Union of India and Ors. **C.W.P. No. 761 of 1998;** *Union of India and Ors. vs. Rakesh* B *Kumar* **(2001) 4 SCC 309: 2001 (2) SCR 927 - relied on.**

Raj Kumar and Ors. Vs. Union of India and Anr. **(2006) 1 SCC 737: 2006 (1) SCR 169 - referred to.**

C **Case Law Reference:**

2001 (2) SCR 927	**Relied on.**	**Paras 7, 10, 12**
2006 (1) SCR 169	**Referred to.**	**Paras 10, 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. D 9647-9650 of 2003.

From the Judgment & Order dated 25.8.2000 of the High Court of Kerala at Ernakulam in Writ Appeal No. 443 & 279 of 2000 and order dated 28.9.2000 in Review Petition No. 413, E 443 & 414 of 2000 in W.A. No. 279 of 2000.

Tara Chandra Sharma, Neelam Sharma, Rashmi Malhotra, B.K. Prasad, Sushma Suri for the Appellants.

M.P. Vinod, Neelam Saini for the Respondents.

F The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Delay condoned.

2. We have heard Mr. Tara Chandra Sharma, learned G counsel for the appellants, and Mr. M.P. Vinod, learned counsel for the respondents.

3. The respondents were the original writ petitioners before the High Court. They were constables in the Border Security Force (BSF). On completion of 10 years service, they tendered H resignation. Their resignation was accepted by the

Commandant 48 BN BSF. The order accepting resignation provided that they would be entitled to pensionary benefits at their own request on extreme compassionate grounds. Later on, it was found that the pensionary benefits were not admissible to them and few others whose resignation was accepted under Rule 19 of the Border Security Force Rules, 1969 (for short, 'BSF Rules'). Accordingly, on October 20, 1998, a letter was sent intimating them that no pensionary benefits were admissible to those who have proceeded on resignation under Rule 19 of the BSF Rules. However, their case for reinstatement in BSF would be considered subject to refund of all payment made to them from the Government such as GPF, Gratuity, CGEGIS, etc. on their resignation. The respondents challenged the above communication by filing two separate Writ Petitions.

4. The writ petitions were contested by the present appellants (respondents therein). Their stand in the High Court was that the writ petitioners were governed by the Central Civil Services (Pension) Rules, 1972 (for short, 'CCS (Pension) Rules') and as per these rules the minimum qualifying service for pension is 20 years and, therefore, they were not entitled to any pension.

5. The Single Judge of the High Court referred to Rules 19 and 182 of the BSF Rules and relevant provisions of CCS (Pension) Rules, particularly Rules 26, 48-A and 49(2)(b). The Single Judge held that when the petitioners (therein) were allowed to resign with pensionary benefits under Rule 19 of the BSF Rules, then their claim for pension must be worked out under Rule 49(2)(b) of the CCS (Pension) Rules. Accordingly, the Single Judge, by his judgment dated September 29, 1999, allowed the writ petitions and directed the present appellants to grant pension to the petitioner (respondents herein) in accordance with Rule 49(2)(b) of the CCS (Pension) Rules.

6. Against the order of the Single Judge, the present appellants preferred Writ Appeals. The Division Bench of the

A Kerala High Court upheld the decision of the Single Judge and dismissed the Writ Appeals vide judgment dated August 25, 2000. While doing so, the Division Bench referred to the decision of the Himachal Pradesh High Court in *Ex-Naik Rakesh Kumar Vs. Union of India & Others* – C.W.P. No. 761 B of 1998. It is from this order of the Division Bench that the present Appeals, by special leave, have arisen.

7. The judgment of the Himachal High Court in *Ex-Naik Rakesh Kumar Vs. Union of India & Others* was challenged by the Union of India before this Court in the case of *Union of* C *India and Others Vs. Rakesh Kumar*, (2001) 4 SCC 309. The question involved therein was - Whether members of BSF who have resigned their posts after serving for 10 years or more years but less than 20 years are entitled to pension/pensionary benefits under relevant provisions of the Border Security Force D Act, 1968 (for short, 'BSF Act') and the BSF Rules or the CCS (Pension) Rules.

8. This Court referred to Section 8 of the BSF Act and Rule 19 of the BSF Rules and the provisions of the CCS (Pension) E Rules, particularly Rules 35, 36, 48, 48-A and 49. G.O. dated December 27, 1995 issued by the Central Government was also referred to. After quoting G.O. dated December 27, 1995, this Court in para 20 of the report observed as follows :-

F "20. The aforesaid GO makes it clear that there was a demand for grant of pensionary benefit on acceptance of the resignation under Rule 19 and that demand was accepted by the Government. Para 2 of the GO makes it clear that the Government has agreed that a member of BSF is entitled to get pensionary benefits on resignation G under Rule 19 provided he has put in requisite number of years of service and fulfills all other eligibility conditions. This para only reiterates Rule 19. It also clarifies that authority competent to grant permission to resign is also empowered to make reduction in pension if the member H of BSF is eligible to get such pension. Para 5 provides

that in future the competent authority who accepts the resignation would specify in the 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 para 6, directions are issued for pending 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 GO as a whole, it nowhere reveals the Government's intention to confer any additional pensionary benefits on the members of 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 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 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 GO or specific orders passed by the competent authority granting pension, the appellants are estopped from contending that such officers are not entitled to get pensionary benefits. As stated above, the GO does not confer any additional benefit. Even in 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."

9. While dealing with the arguments of the ex BSF personnel that on the basis of the G.O. dated December 27, 1995, a number of persons are granted pensionary benefits even though they have not completed 20 years of service and,

A therefore, the Court should not interfere and see that the pensionary benefits granted to the respondents (therein) are not disturbed and are released as early as possible, this Court observed that for grant of pension to the members of BSF, the provisions of the CCS (Pension) Rules are applicable and the
B 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 the pensionary benefits. It was expressly held that Rule 19 of the BSF Rules did not make any provision for grant of pensionary benefits. In para 22 of the
C report, this Court concluded:-

> "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 the CCS (Pension) Rules or on the basis of the GO, the respondents who have retired after
D 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
E 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
F calculation and quantification of pension amount. The GO dated 27-12-1995 does not confer any additional right of pension on the BSF employees."

10. In a later decision in the case of *Raj Kumar & Others Vs. Union of India and Another*, (2006) 1 SCC 737, this Court
G was again concerned with the similar question. This Court referred to the earlier decision of this Court in *Union of India & Others Vs. Rakesh Kumar* (supra) and reiterated the position that was declared in *Union of India & Others Vs. Rakesh Kumar* (supra), namely, that Rule 19 of the BSF Rules did not
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grant any right to pension in cases where pension was not payable under the CCS (Pension) Rules. In para 17 of the report, the Court catalogued the cases before it as follows :

"17. ....

(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 (supra). 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."

11. Having regard to the peculiar facts arising in each of the above groups, this Court made the following orders :

"1. The personnel falling in category (B)(ii) i.e. those persons who had retired subsequent to 1996 pursuant to

A 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
B 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 reinduction into service, and those falling in category (B)(i)(a) shall be so reinducted,
C subject to the conditions stipulated in the circular dated 17-10-1998 and on condition that they shall refund GPF and pension amounts drawn by them till reinduction. The authorities shall indicate the deadline by which such persons shall offer themselves for reinduction.
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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 reinducted today as they are age-barred or physically or medically unfit or for any other
E 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
F 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
G 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
H shall their pension be stopped now."

12. In view of the decisions of this Court in *Union of India & Others Vs. Rakesh Kumar* (supra) and *Raj Kumar & Others Vs. Union of India and Another* (supra), the legal position that emerges is this : Rule 19 of the BSF Rules does not entitle any pensionary benefits on resignation of its personnel. The pensionary benefits are not ordinarily available on resignation under CCS (Pension) Rules since Rule 26 provides for forfeiture of service on resignation. However, by virtue of G.O. dated December 27, 1995 read with Rule 19 of BSF Rules, the member of BSF would be entitled to get pensionary benefits if he is otherwise eligible. Such personnel must, therefore, satisfy his eligibility under CCS (Pension) Rules. The CCS (Pension) Rules do not provide that a person who has resigned before completing 20 years of service is entitled to the pensionary benefits. Rule 49 only prescribes the procedure for calculation and quantification of pension amount and not the minimum qualifying service.

13. The view taken by the Single Judge and judgment of the Division Bench upholding the view taken by the Single Judge cannot be upheld and have to be set aside in light of the legal position noted above.

14. In the present case, the respondents had resigned from BSF service immediately after completion of 10 years service and, therefore, they are not entitled to any pensionary benefits.

15. We, accordingly, allow these Appeals and set aside the orders dated August 25, 2000 passed by the Division Bench and dated September 29, 1999 passed by the Single Judge. We, however, observe that amount of pension paid to the respondents herein, if any, shall not be recovered.

16. No costs.

N.J. Appeals allowed.