

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 421 of 2016

Reserved on 18.05.2018.
Pronounced on **02.07.2018.**

Hon'ble Mr. Justice V.C Gupta, Member - J

1. Tarun Kumar Chatterjee, aged about 67 years, S/o Late K.D.Chatterjee R/o C-168, Sector B, Aliganj, Lucknow . 226024.

..... Applicant

By Advocate: Sri Anurag Srivastava

VERSUS

1. Union of India through Ministry of Urban Development and Poverty Alleviation, New Delhi . 110011.

2. Director (Administration . I) Government of India, Directorate General, Central Public Works Department, Nirman Bhawan, New Delhi.

3. Dy. Director (Administration . VI), Directorate General, Ministry of Urban Development, Central Public Works Department, Nirman Bhawan, New Delhi.

4. Chief Engineer, NDZ-VII, Central Public Works Department, Vidyut Bhawan, Shanker Market, New Delhi.

5. Karya Palak Abhiyanta (Mukhya), Office of Chief Engineer (NDZ) VII Central Public Works Department, Vidyut Bhawan, Shanker Market, New Delhi.

..... Respondents

By Advocate: Sri Methilesh Kumar

ORDER

This O.A has been filed by the applicant seeking the following reliefs:

(a) To issue an appropriate order or direction thereby setting aside the impugned letters dated 3.3.2016 as contained in Annexure-1 & 2 respectively to the original application.

(b) To issue an appropriate order or direction thereby setting aside the impugned letter dated 21.01.2016 as contained in Annexure-3 to the original application.

(c) To issue an appropriate order or direction thereby setting aside the impugned letter dated 27.02.2015 as contained in Annexure-4 to the original application.

(d) To issue an appropriate order of direction thereby directing the opposite parties to provide the terminal benefits adding the services rendered by the applicant in CPWD for pension and other retiral service benefits.

(e) To issue a suitable order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.

(f) To award the cost of this original application.

Perusal of the reliefs claimed in the O.A. reveals that orders passed by the authorities and annexed as Annexure Nos. 1, 2, 3 and 4 are sought to be set aside and are extracted herein below for ready reference:

Annexure A-1

“To
 Shri Tarun Kumar Chatterjee,
 Retd. AE, CPWD
 C-168, Sec-B, Aliganj
 Lucknow – 226024.

Sub: PG petition of Sh. T.K. Chatterjee, AE(E) from CPWD – payment of terminal benefits – regarding.

I am directed to refer you PG registration no. DOPPW/P/2014/02888 and 04168 dated 13/08/2014 and 11/11/2014 which has been received from EC-VII vide OM. No. 5/134/2014/EC-VII dated 29/08/2014 and 3/12/2014. Your PG petition has been considered in office of O/o Chief Engineer, NDZ-VII, CPWD as intimated vide their letter no. 23/08/1996-CE NDZ-VII/2015-16-142 dated 21/1/2016 (copy enclosed).

It is intimated that taking into consideration the service period and status of quasi permanency, the prorate pension benefits as claimed by you has not been acceded to. However, prorate service gratuity admissible amounting to Rs. 6342/- for a period of 16/7/1973 to 29/6/1984 has been considered and approved and the same has been sent to PAO (DGW) for payment vide bill No. 245 dated 20/1/2016.

In view of facts stated above, your PG petition is being treated as complied and deleted from the list of pending PG case.”

Annexure A-2**OFFICE MEMORANDUM**

Subject : PG Petition of Shri T.K. Chatterjee, Asst. Engineer (E) – reg payment of terminal benefits.

Ref: DOPPW/P/2014/02888 and 04168 dated 13.08.2014 & 11.11.2014 on the subject cited above.

A copy of CPWD letter No. 33/38/2014-EC. III dated 3.02.2016 and 23/8/1096/CE. NDZ-VII/279(H) dated 5.2.2016 on the subject cited above are enclosed. The applicant has been informed that after taking into consideration the service period and status of quasi permanency, the prorata pension benefits as claimed by him has not been acceded to. However, prorata gratuity has been paid to the official as admissible by PAO-DGW for the said period.

2. In view of the position stated therein **the case may be deleted from the list of Pending PG cases of CPWD under intimation of this Directorate.**

Annexure A-3

विषय : PG Petition of Shri T.K. Chatterjee, Asst. Engineer (E) from CPWD - payment of terminal benefits – regarding.

संदर्भ: 1. आपके कार्यालय पत्र संख्या 33/38/2014 EC-III दिनांक 23.02.2015.

2. शहरी विकास मंत्रालय के कार्यालय पत्र सं A-46017/227/14-PG दिनांक 09.02.2015.

“It is in reference to referred letters on the subject cited above, the contents of representation in r/o prorata pension/ terminal benefits of Shri T.K. Chatterjee, AE(E) has been examined in view of opinion & advice by PAO & applicable rules. Accordingly, taking into consideration the service period and status of quasi permanency, the prorata pension benefits as claimed by Sh. Chatterjee can't be acceded to.

However, the prorata service gratuity admissible amounting to Rs. 6342/- for a period 16.07.1973 to 29.06.1984 has been considered and approved by Competent Authority and the same has been sent to PAO (DGW) for payment vide Bill NO. 245 dated 20.01.2016.

Further, it has been noticed that the selection of Sh. Tarun Kumar Chatterjee, AE(E) in SBI through open advertisement has resulted in resignation and relieve from CPWD and as such was not a case of foreign service therefore, the amount of Rs. 16800/- deposited in Govt. account by Sh. Chatterjee on account of LS&PC for lien period 30.06.1984 to 30.06.1986 was not in order. Hence, bill for refund the aforesaid amount has been sent to PAO(DGW) for payment vide above Bill No. 245 dated 20.01.2016.

This issue with approval of CE, NDZ-VII, CPWD, New Delhi."

Annexure A-4

विषय : Resignation of Shri T.K. Chatterjee, Asst. Engineer (E) from CPWD - payment of terminal benefits – reg.

संदर्भ: 1. इस कार्यालय के पत्र संख्या 3201 दिनांक 16.09.2014.

2. आपके कार्यालय पत्र संख्या 33/38/2014 EC-III दिनांक 23.02.2015.

उपरोक्त विषय पर संदर्भित पत्रों में श्री टी.के. चटर्जी, सहायम अभियंता, वै, का केस जोकि काफी दिनों से लंबित था, का स्पष्टीकरण महानिदेशालय से मांगा गया था जिसके संदर्भ में महानिदेशालय ने कम से 2 पर संदर्भित पत्र के साथ वित मंत्रालय का कार्यालय ज्ञापन सं. 23(18)-E(B)/75 दिनांक 8 अप्रैल 1976 की छायाप्रति इस कार्यालय को भेजी थी, के पहले पैराग्राफ के अंतर्गत यह मामला आता ही नहीं है फिर भी श्री टी. के. चटर्जी का केस का क्रमानुसार तरीके से जांच / अध्ययन किया गया।

अतः उक्त केस की जांच / अध्ययन में यह पाया गया कि श्री टी.के.चटर्जी, सहायम अभियंता, वै, ने के.लो.नि.वि. से दिनांक 29.06.1984 को Technical Resignation देकर SBI New Delhi में कार्यभार ग्रहण किया था और जब ये SBI में कार्यरत थे उसी दौरान उनका Lien Period समाप्त हो गया।

उक्त संदर्भ में यह भी स्पष्ट किया जाता है कि श्री टी.के. चटर्जी की SBI New Delhi में नियुक्ति लोकहित में नहीं थी क्योंकि SBI में उनकी नियुक्ति समाचार / रोजगार पत्रों में दिए गये विज्ञापन के आधार पर हुयी थी।

इस केस में संदर्भ में यह भी सूचित किया जाता है कि रु0 16800/- Lien Period का Leave Salary एवं Pension Contribution के रूप में PAO (DGW) द्वारा जमा करवाया गया जिसके लिए इस कार्यालय का कोई भी निर्देश नहीं था तथा वेतन एवं लेखाधिकारी के पत्र सं. PAO/DGW/Pension/LSPC/2013-14/1780-81 दिनांक 19.09.2014 के निर्देशानुसार पेंशन मामला स्वीकृति हेतु इस कार्यालय के समसंख्यक पत्र संख्या 3768—हि दिनांक 23.12.2013 द्वारा भंजा गया था।

अतः उपरोक्त ज्ञापन के आधार पर श्री टी.के. चटर्जी, सहायम अभियंता, वै, का मामला Pro rata pension के लिए अनुमत्य नहीं है फिर भी मामला महानिदेशालय को इस आशय से प्रेषित किया जाता है कि वे अपने स्तर पर इसकी जांच करें कि अगर भारत सरकार के किसी provision के अंतर्गत उनको pro rata pension दिया जा सकता है तो इस कार्यालय को निर्देश देने की कृपा करें।

यह पत्र मुख्य अभियंता, न.दि.अं. –7 महोदय की अनुमति से जारी किया जाता है।"

2. The brief facts giving rise to this O.A are that the applicant joined Central Public Works Department (CPWD) being a direct recruit as a Junior Engineer (Electrical) on 16.07.1973. He earned promotion up to Assistant Engineer (Electrical). While working in CPWD the applicant in pursuance of open invitation advertised for the post of Assistant Engineer in the State Bank of India (SBI) applied and in open selection he was selected for the post. After acceptance of technical resignation from CPWD on 29.06.1984 he joined SBI. Relieving order was issued in favour of applicant from

CPWD on 29.06.1984 and on the same day the applicant joined SBI as Assistant Engineer, copy of relieving certificate for joining at SBI are annexed as Annexure A-12 and A-13. The same reads as under:

Annexure A-12

“ OFFICE MEMORANDUM

Consequent upon his selection for the post of Assistant Engineer (Elect) in the SBI, New Delhi through the Recruitment Board, New Delhi in the pay scale of Rs. 700-40-900-50-1100-EB-1200-60-1800, Shri T.K. Chatterjee a quasi permanent JE(E), officiating as ASW(E) may be relieved of his duties in the office of the Chief Engineer (Elect.).

Shri Chatterjee will retain a lien against his quasi-permanent post of JE (E) in the CPWD for a period of two years w.e.f. the date of his relief or till he is permanently absorbed in the SBI whichever is earlier.

Foreign service contributions will have to be paid as prescribed under the rules.”

Annexure A-13

“ कार्यालय आदेश

निर्माण महानिदेशालय के दिनांक 25.06.84 के कार्यालय आदेश सं0 27/21-सी/79-ई के अनुपालन में श्री टी० के० चटर्जी, सहायक सर्वेक्षक वि०, जो निर्माण (अपठनीय) से संबद्ध है को उनके भारतीय स्टेट बैंक, नई दिल्ली में सहायक इंजीनियर के (अपठनीय) चयन होन पर उन्हे 29.6.84 अपराह्न को इस कार्यालय से भारमुक्त किया जाता है।”

3. Perusal of the relieving certificate issued by CPWD reveals that the applicant will retain the lien against his quasi permanent post of Junior Engineer in CPWD for a period of two years w.e.f. the date of his relieving or till he is permanently absorbed in SBI whichever is earlier. The applicant was confirmed in SBI and after getting confirmation the applicant again tendered his resignation on 20.08.1986 from the post of Assistant Surveyor of Works (E) in the CPWD. He alongwith his alleged resignation dated 20.08.1986 undertook to pay salary and pension contribution charges which were applicable at the time of submitting his resignation. The

Department calculated the amount and asked the applicant to deposit the same. In pursuance thereof the applicant deposited the amount and his case was processed for grant of gratuity pension etc. but the claim of the applicant for pension was denied on two grounds; firstly his period of service in CPWD cannot be counted for pro-rata pension and secondly joining of the service in SBI is not in the public interest as he has joined SBI in pursuance of open advertisement published in the newspaper and after participating in the open selection he was selected and joined after technical resignation which was accepted on 29.06.1984. Aggrieved by the aforesaid decision the applicant filed this O.A.

4. CA has been filed by the official respondents wherein it has been contended that decision taken by the authorities for not granting pro-rata pension and other benefits except service gratuity of Rs. 6342/- for the period of posting in CPWD is said to be fully justified. It was contended that the applicant is not eligible for getting pro-rata pension in view of O.M. No. 26(18) EV(B)/75 dated 08.04.1976. However, he is getting pension on retirement on the last assignment from the SGPCI Lko from where he was retired.

5. It was further contended that the period commencing from 16.07.1973 to 29.06.1984 if counted that comes to 10 years 11 months and 13 days. It was contended that the period of lien could not be treated in continuation of service. The benefit of this period of lien is available to employee only if during the continuance of period of lien he comes back in the department from where he was relieved. In the present case the applicant has not joined the department from where he was relieved during the period of continuance of lien. As such, he is not entitled for the benefit for the period of lien for counting the period of service rendered by him in CPWD.

6. It was further contended that the applicant resigned from CPWD and his lien against the post of Junior Engineer on which he was confirmed was for a period of two years. His relieving was virtually to enable the applicant to join in SBI on the post on which he was selected in pursuance of open advertisement made in the newspaper and as such joining of the applicant shall not amount to absorption in PSU in public interest. The applicant has not permanently transferred in the SBI nor he was on deputation at SBI, so joining through the open advertisement after open selection will not be treated as continuation of service rendered in the parent department.

7. Heard the counsel for the applicant and counsel for the respondents at length and perused the record.

8. Learned counsel for the applicant relied upon Appendix 18 Section (i) which contains Government orders regarding grant of pro-rata retirement benefits to Central government employees permanently transferred to autonomous bodies/ Public Sector Undertakings (PSU) etc. On the strength of these government orders which seems to have been issued in the light of Rule 37 of CCS pension Rules 1972, it has been provided by clarifying the existing rules that if a central government employee permanently absorbed in PSU, the pro-rata pension shall be fixed after taking into consideration the period of service rendered by such employee in his parent department. It was also contended that nationalised banks including RBI and SBI and its subsidiary banks are to be treated as autonomous bodies for the purpose of grant of pro-rata retirement benefits to the permanent central government employees on absorption in these bodies.

9. It was further contended that every central government employee is required to exercise the option within six months of his absorption for either of the alternative indicated below:

Exercise of Option:

(a) Receiving the monthly pension and Detah-cum-Retirement Gratuity, already worked out, under the usual government arrangements.

(b) Receiving the gratuity and a lump sum amount in lieu of pension worked out with reference to commutation tables obtaining on the date from which the pro rata pension, gratuity, etc. will be disbursable.

Where no option is exercised within the prescribed period, the officer will automatically be governed by alternative (b) above. Option once exercised shall be final. The option shall be exercised in writing and communicated by the Government servant concerned to the undertaking/autonomous body.

10. On the strength of these Government orders it has been contended by learned counsel for the applicant that applicant would be entitled to get pro-rata pension after considering the service rendered by him in CPWD. As the applicant has been absorbed in the SBI after confirmation on the post on which he has joined, he will be entitled to all the benefits admissible to the other corresponding employees of the Organisation.

11. My attention has also been drawn to a decision taken by the central government wherein it was held that there should be no distinction between two type of Government servants one on deputation getting absorbed in public interest and other those getting absorbed on their own volition for the purpose of grant of pro-rata retiring benefits, subject to condition that the period of leave to be carried forward should be restricted to 120 days. It has been further contended that the applicant would be entitled to pro-rata pension.

12. It was further argued that a clarification has been issued by the government that in public sector undertaking and autonomous bodies, since the government servants are deemed to have retired from government service on the date of absorption, the procedure laid down in Chapter VIII of CCS (Pension) Rules, 1972 which applies to government servant who retire in normal course, should mutatis mutandis apply in the case of government servants who are

absorbed in the public interest in the public sector undertaking or in an autonomous body.

13. Learned counsel for the respondents vehemently opposed the arguments rose by the counsel for the applicant and would submit that the applicant consciously tendered his resignation to join the new assignment which he got after getting successful in an open competition on the basis of advertisement made to public at large. As such, he shall deemed to have been resigned from service and as per provision of Rule 26(1) of CCS (Pension) Rules the service stands forfeited as he has not retired after completing 20 years continuous qualifying service or was not compulsorily retired from service in accordance with rules. As such his services are liable to be forfeited. It was further argued that central government servant would be entitled to pension if he retires on attaining the age of superannuation or has been retired after seeking voluntary retirement in accordance with rules after rendering 20 years of service and complying other conditions attached for voluntary retirement or when he was compulsorily retired from service in accordance with rules. In such conditions if qualifying service of government servant is more than 10 years he would be entitled for pro-rata pension but in case of forfeiture on account of resignation the government servant would not be entitled to pro-rata pension.

14. It was further contended that whatever clarification has been relied upon by the applicant under Appendix 18 would not apply in the present case because the applicant has not joined the SBI on deputation basis nor he had been transferred permanently. The applicant was not absorbed while on deputation or on permanent transfer from CPWD to SBI, as such, his joining in SBI cannot be said to be in continuation of his service which he rendered in CPWD. Hence, the clarification relied upon with regard to absorption of service in public sector undertaking shall not apply.

15. There cannot be any doubt with regard to proposition of law that 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 rules by issuing instructions not inconsistent with the rules. The Government also can confer certain benefits on its employees by an administrative order. While clarifying the existing rules in appendix 18 It was also made clear by the government that cases of resignation from the PSUs/ autonomous bodies will, for the purpose of these orders be treated as resignation from government service, entailing forfeiture of earlier service under government and loss of pension benefits.

16. The controversy involved in the case in hand is not *res integra*. The judgement rendered by the Hon'ble Supreme Court in **UoI & Ors Vs Rakesh Kumar (2001) 4 SCC 309** squarely covers the question involved in this case.

17. Perusal of para 2 of judgement in Rakesh Kumar's case (supra) reveals that the question for consideration before the Hon'ble Supreme Court was the same as is in this case. Para 2 of the judgement is extracted herein below;

“2. 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 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”].

18. Hon'ble Supreme Court while deciding the case finds in para 10 that CCS (Pension) Rules would be applicable to the members of BSF for grant of pension. The Hon'ble Supreme Court after considering provision of CCS CCA (Pension) Rules as well as relevant Acts and Rules of BSF ruled in para 13, 14, 15 and 16 as follows:

13. The next step is — once it is accepted that members of BSF are governed by the CCS (Pension) Rules, then the question is — whether a member is entitled to get pension on his resignation before the 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 benefits in cases where a government servant voluntarily retires after completing 20 years of qualifying service and also retires after

completing 30/33 years of qualifying service, invalid pension or compensation 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 compulsory retirement. Retiring pension is further given 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 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 Services Regulations. Rule 48-A provides for voluntary retirement after completion of 20 years of 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:

"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—

(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 Services Regulations; and

(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.—

(1) At any time after a government servant has completed thirty years' qualifying service—

(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:

Provided....

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.

Provided...."

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

"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.

(2)(a) In 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;

(b) in case of a government servant retiring in accordance with the provisions of these Rules before completing qualifying 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;

(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.

(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) ***"*

15. The aforesaid procedure under Rule 49 is for calculating and qualifying 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:

(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% of the average emoluments subject to the maximum provided therein.

(c) In case of the 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 (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 pension admissible under sub-rule (2) of Rule 54.

16. On the basis of Rule 49, it has been contended that qualifying service for getting pension would be ten years. In our view, this submission is without any basis. Qualifying service is defined under Rule 3(q) to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these Rules. Rule 13 provides that qualifying service by a government servant commences from the date from which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. This Rule nowhere provides that qualifying service for getting pension is 10 years. On the contrary, there is 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 of service gratuity calculated at the rate of half month's 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 the respondent members of 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 at 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 (2)(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 a 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 the 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 the CCS (Pension) Rules specifically provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the Government where service qualifies. Hence, on the basis of Rule 49 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 CCS (Pension) Rules giving such benefit to such government servants.'

19. The only vital change in pension rules is that minimum qualifying service has been reduced from 33 years to 20 years. All other rules are as it was. The case is not of absorption of the applicant while on deputation or on transfer. It is also correct that

there shall be no distinction in absorption on his own volition or otherwise while central government employee was on deputation or transfer.

20. In view of aforesaid facts and circumstances, discussions made and keeping in view the ratio propounded in Rakesh Kumar case (supra) no different view can be taken by this Tribunal which has been taken by the respondents in the impugned orders. The petition lacks merit and no interference is warranted in the impugned orders.

21. Accordingly, the O.A stands dismissed. There shall be no order to cost.

**(Justice V.C Gupta)
Member (J)**

RK