

(2000) 07 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 446 of 2000

Arvind Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3(i)(ii)

Citation : (2001) 4 SCT 804

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Subash Bhat, S. Kour, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, J.—Facts on which parties are not at variance in this case are as under :

Petitioner was appointed vide Annexure ""A"" to the writ petition on 23rd October 89 as GDO GDII (Dy. Superintendent of Police/Company

Commander) in the C.R.P.F. on temporary basis. Amongst other conditions Clause 5.1 of this appointment order was in the following terms :

i) The condition that on your appointment as Medical Officer GdII, you will be required to serve the Force for a minimum period of three years of

initial engagement. The appointing authority may, during the period of initial appointment, permit you for good and sufficient reason, to resign from

the Force with effect from such date as may be specified in the order accepting your resignation.

2. Petitioner continued to work in the C.R.P.F. at different places. On 22.8.1992 he was granted 15 days LKD (leave of the kind due). Petitioner

submitted a communication dated 30th August 92 (Annexure ""D"" to the writ

petition) to respondent No. 2 on the subject `quitting service'.

Contents of this communication are as under :

Dr. Arvind Kumar

C/o. Thiru K. Bhaskaran

13 BSrinivasa Street

Naradhapuri, Chromepet

Madras 600064

To

The Director General,

C.R.P.F. C.G.O. Complex,

Lodhi road, New Delhi 110003.

Through : (Proper Channel)

Sub : Quitting Service.

Sir,

With dur regards I am submitting these few lines for your kind consideration, please.

I joined CRPF on 10th Nov. 1989 with 21BN. CRPF and served it till 24th August, 92. Due to compelling, personal and domestic circumstances

I am not able to serve CRPF any more. In view of the above I humbly request you to take further needful action please in this regard, so that I

cease to be a member of CRPF from 09th Sept. 1992.

I further request you to communicate your decision at the address given above and direct PAOCRPF to release all my dues after final adjustment

to my banker SBI Suratgarh at the earliest.

Thinking you,

Yours faithfully,

30th August 92, (Dr. Arivind Kumar)

GDOII, 16BN CRPF

I.R.L.A. No. 2862 (On EL)

3. Without awaiting for the outcome of Annexure ""D"" extracted herinabove petitioner joined Hindustan Zinc Limited. He has received letter of

appointment from this concern in May 92. Neither he informed the respondents nor he had routed his application through proper channel.

4. After the receipt of annexure ""D"", communications were address to the petitioner at the address as detailed in the said annexure. It may be

noted that address given is of Madras. Record of the case shows that besides addressing communications at Madras address of the petitioner,

those were addressed at his Delhi address also. In any event those remained unserved. Postal endorsements made were either of refusal on the

part of petitioner or he intentionally avoided to take delivery or was not found despite numerous attempts having been made in that behalf. Finally a

special messenger was sent at his Madras address by the respondent authorities where K. Bhaskaran, a friend of the petitioner reported that he is

serving somewhere in Rajasthan. It was thereafter learnt that he is serving in Hindustan Zinc Limited as a Medical Officer.

5. Communications were addressed to the petitioner to tender his resignation in terms of Clause 5.1 of his appointment letter (Annexure ""A

extracted hereinabove), but no avail. Therefore following Articles of Charge were framed against him :

Article I

Dr. Arvind Kumar, GDO GradeII of 16 Bn. CRPF is wilfully absent from duty with effect from 9.9.1992 without sufficient reasons and thereby,

he has violated rule 3(i)(ii) of CCS (Conduct) Rules, 1964.

6. This was accompanied with the Statement of Imputation of Misconduct as well as list of documents and witnesses. Copy of the Memorandum

issued by respondent No. 2 accompanied by Statement of Articles of Charge, Statement of Imputation of Misconduct as well as list of documents

and witnesses is placed on the file as Annexure ""E"" to the writ petition. This was served upon the petitioner on 22nd November 94 as admitted by

him in his representation against final report of inquiry officer, Annexure ""M"" to the writ petition.

7. On the date when Annexure ""E"" was served petitioner was admittedly in the service of Hindustan Zinc Limited, a Public Sector Undertaking and

was well aware that his resignation tendered vide Annexure ""D"" (supra) has not been accepted. Inquiry officer vide his report found that the

petitioner violated the provisions of Rule 3(i) (ii) of CCS (Conduct) Rules, 1964

and as such has committed misconduct which stood proved beyond doubt.

8. A copy of this inquiry report is placed on the file by the respondents alongwith Annexure ""D"" at pages 41 to 62. In this context it may be noted

that Annexure ""D"" from pages 29 to 40 consists of the submission of the petitioner regarding the final report of inquiry officer.

9. After receipt of Annexure ""D"" i.e. the submissions of the petitioner, final order of dismissal dated 8th March, 2000 has been passed whereby

penalty of dismissal of service has been imposed upon the petitioner. This order was delivered on 1st April, 2000 to the petitioner as is evident

from Annexure ""N"" attached with the writ petition.

10. Petitioner had got issued a notice under Section 80 CPC served through his learned counsel. This is dated 11.3.1996 and its copy is Annexure

H"" with the writ petition. It was duly replied to on behalf of respondents on 3rd July, 1996 vide Annexure ""J"".

11. It seems that after the receipt of Annexure ""J"" petitioner approached respondent No. 2 with the request to kindly intimate him about the

location of Unit/Battalion where he has to joint his duties. He was promptly asked to join at Jalandhar (Pb). Communications in that behalf are

Annexures ""K"" and ""L"" to the writ petition.

12. From the narration of above facts it is obvious that after the sanction of 15 days leave vide Annexure ""C"" petitioner did not resume his duty nor

he tendered his resignation in terms of Annexure ""A"".

13. In this writ petition, petitioner has challenged his order of dismissal. According to him he bonafide believed that with the submission of

resignation, Annexure ""D"" the relation of master and servant came to an end. As such subsequent action, if any, was unwarranted, therefore the

impugned order of dismissal dated 8th March, 2000 is liable to be set aside. It was further pointed out by his learned counsel Mrs. Surinder Kaur

that for all purposes resignation is deemed to have been accepted, particularly when it was not rejected. Alternatively she pointed out that vide

Annexure ""G"" petitioner had submitted his resignation on 26.12.1994 by addressing it to the President of India (the competent authority) through

respondent No. 2, as such continuance of the inquiry and its final outcome is completely meaningless and thus the order of dismissal cannot be

sustained.

14. Learned counsel for the petitioner further urged that the inquiry purported to have been held against her client was in violation of Central Civil

Services (Classification, Control and Appeal) Rules, 1965 with special reference to Rule 14 thereof. According to her no preliminary inquiry was

conducted by the respondents so as to decide whether this is a case fit for holding regular inquiry or not. Further argument addressed was that

inquiry was completed on 1.9.1998 and impugned order has been passed on 8.3.2000. Without admitting and/or conceding the claim of the

respondents against her client an argument in the alternative was urged that even if everything is accepted against the petitioner, punishment of

dismissal imposed is highly disproportionate to the alleged misconduct, as such the impugned order deserves to be set aside. All these pleas have

been repelled by Shri Subash Bhat, learned Senior Central Government Standing Counsel. He pointed out that on the admitted facts unless

resignation was accepted petitioner continued to be in the employment of respondents in the CRPF. He cannot be allowed to plead ignorance as

to what he was required to do before submitting his resignation. According to him admittedly neither the resignation was addressed to the

competent authority nor the amount of three months pay and allowances was refunded by the petitioner to the respondents.

15. In this behalf grievance made by Mrs. Kaur, learned counsel on behalf of the petitioner may also be additionally noted. According to her at no

point of time till the service of charge sheet on 22nd November 94 at Rajpur Dariba his client was aware regarding his having been proceeded

against and inquiry being in progress. This plea is not open to the petitioner, reason is that from October 89 till August 92 petitioner was serving the

respondents. He was not aware as to what is the amount of pay and allowances received by him. Before addressing his resignation to the President

of India through respondent No. 2 vide Annexure ""G"" to the writ petition, petitioner vide communication dated 1st December' 94 asked Shri R.C.

Tayal, I.P.S. Assistant Director (EssttI), to intimate him the exact amount to be paid in lieu of specified advance notice period to be deposited with

the P.A.O. CRPF. This seems to be nothing but a device coined by the petitioner to evade the issue. Another reason not to accept either the

resignation or this plea of the petitioner is that by this time he had already been chargesheeted and therefore these documents do not improve the case of the petitioner.

16. So far the question relating to resignation having been deemed to be accepted urged on behalf of the petitioner is concerned, it is also of no significance. In this behalf it may be appropriate to observe that petitioner was appointed in terms of Annexure ""A"" and he was to submit his resignation in terms of said annexure. Admittedly this was not done. He was required to deposit the amount of salary etc. As per Annexure ""D"" he has asked the respondent authorities to communicate their decision at the address given in it as also has prayed for a direction to P.A.O. CRPF to release all his dues after final adjustment to his banker SBI Suratgarh at the earliest. At Madras address service could not be effected upon the petitioner. Thereafter attempt was made to serve the petitioner at his Delhi address also but without any success. In these circumstances a special messenger was sent to Madras where Shri K. Bhaskaran, friend of the petitioner informed that petitioner is serving somewhere in Rajasthan.

Inquiry record was summoned which was produced by Shri Bhat. It suggests that a communication dated 10th September 92 was addressed by

petitioner to his friend regarding the former having joined Hindustan Zinc Limited Hospital as Medical Officer wherein two addresses of the

petitioner were mentioned. These find mention at page 4 of the inquiry report. Thereafter Memorandum of Charges was served upon the petitioner

through Managing Director of Hindustan Zinc Limited where he was serving. Services of the petitioner were discharged by this Public Sector

Undertaking. It was only thereafter he had got notice served under Section 80 CPC vide Annexure ""H"". Even then he did nothing in that behalf. In

the circumstances of this case the plea urged regarding deemed acceptance of resignation has no merit and is hereby rejected. Original letter supra

is on enquiry file.

17. Other pleas that inquiry being in violation of Rule 14 (supra) as well as no preliminary inquiry having been conducted are also devoid of any

merit. How and in what manner the provisions of Rule 14 were violated could not be pointed out by Mrs. Kaur by referring to either inquiry report

or to the inquiry proceedings. Even otherwise when a reference is made to the

inquiry file it is evident that it meets the requirement of law in the matter of holding domestic inquiry. Similarly it is not always and in every case necessary and/or is required to hold a preliminary inquiry as was claimed on behalf of the petitioner. In addition to this, on the admitted facts this plea is without any merit. Resignation was not tendered as required under law. When an attempt was made to inform the petitioner to do the needful, communication could not be served at the address as was desired by the petitioner in terms of his resignation letter, Annexure ""D"" extracted hereinabove. As such joining of service in Hindustan Zinc Limited by the petitioner clearly suggests that there was hardly any need to hold preliminary inquiry. Petitioner in no case could have joined the service of Hindustan Zinc Limited till his resignation was either accepted or he was relieved in accordance with law by the respondents. Admittedly this had not happened in this case. So the plea urged on behalf of the petitioner is rejected.

18. Mrs. Kaur, learned counsel appearing for the petitioner pointed out that inquiry took about four years and thereafter it took about 11/2 years for the competent authority to pass the impugned order of dismissal. Reliance in this behalf was placed on Government of India, C.S. (Dept. of Per.), O.M. No : 39/43/70Ests.(A), dated 8th January, 1971 (Annexure ""O"" attached with the writ petition). So far the plea of time being consumed in holding of inquiry is concerned, reason has been sufficiently explained. What is stated in this behalf by the respondents is to the following effect :

8. That the contents of para No. 8 are wrong and misconceived. It is submitted that the DE was initiated on 30.9.1994 and Shri B.S. Yambem, Commandant was appointed as Inquiry Officer. But since he was involved in a criminal case and was placed under suspension, Sh. M.P. Nathaniel, Commandant who is senior to the petitioner was appointed as Inquiry Officer in his place. As regards engagement of Sh. A.K. Sharma, Commandant as Defence Assistant, petitioner was asked to engage another defence assistant due to reasons mentioned in the order sheet dated 18.9.1997. Shri M.P. Nathaniel, Commandant (E.P.) was changed on administrative ground as he proceeded on deputation to NSG and Sh. H.B. Singh, Commandant was appointed as Inquiry Officer. the presenting Officer Sh.

Mukh Ram had retired from service w.e.f 31.10.97 and

therefore, Sh. Rajesh Vats, DC was appointed in his place. Conducting of departmental enquiry against a GO is a time consuming process

involving consultation at various levels such as MHA, UPSC etc. Thus the time taken to finalise the DE is due to administrative reasons. Further

Sh. Arun Kumar Singh was permitted to act as his defence assistant as per his choice.

13. That the contents of No. (sic)(d) are wrong and misconceived hence denied. It is stated that the reason for time taken in completion of enquiry

have already been explained in preceding paras. Conducting of DE against of GO involves consultation at various levels and obtaining approval of

MHA etc. Moreover, due to scattered posting of Inquiry officer/presenting officer and witnesses etc. on law and order duties, it takes time to

concentrate at one place for conducting the enquiry. The time taken in completion of the DE is due to administrative reasons and there is no

intentional delay in completion of the inquiry. Therefore, no harassment has been meted out to the petitioner and the dismissal order has been

issued as per law and principle of natural justice.

19. This completely answers the objection of Mrs. Kaur. In this case the matter was required to be finally dealt with in consultation with Union

Public Service Commission. Communication was addressed by the respondents to the Union Public Service Commission on 22.4.1999. Vide

Communication (copy whereof is placed by the petitioner at pages 62 to 66 of the petition) its opinion was submitted on (sic) whereafter final

order came to be passed on 8th March, 2000. In this view of the matter no exception can be taken to the time taken in holding of the inquiry and

thereafter passing of the final order. Public Service Commission could not have been bypassed before passing the final order.

20. So far the alternate plea urged on behalf of the petitioner that the punishment imposed in this case was disproportionate to the misconduct is

alleged is concerned, ordinarily court might have favourably considered the same. Unfortunately fact remains that petitioner because of his own

conduct and in the circumstances of this case has disintitiled himself from the grant of any relief.

21. As it is revealed from the circumstances of the case petitioner had applied for

the job in Hindustan Zinc Limited long before submission of Annexure ""D"", that too neither through proper channel nor respondents were ever intimated in that behalf. In addition to this without awaiting for the outcome of his resignation he joined the duty probably in the month of September 92. At this point of time he was well aware that he continues to be in the service of CRPF and his resignation had still not been accepted. Matter did not rest here as is evident from the inquiry record as well as documents on this file that he made all out efforts to withhold/suppress his address of the place where he has joined service while he was already in the service of CRPF. Had the department not deputed special messenger, probably it may not have been possible to know his whereabouts. Petitioner has made an attempt to find fault with the communications addressed at his Madras address as also elsewhere by means of his submissions Annexure ""M"" to the writ petition. He has also tried to justify the submission of his resignation on the grounds detailed in it.

When a reference is made to Annexure ""D"" there is no such thing pointed out, therefore as a consequence of it all the facts pointed out in Annexure M"" can safely be presumed to be an afterthought with a view to overcome the inquiry report. Admittedly Madras address was himself provided by the petitioner for conveying the outcome of Annexure ""D"". In case there was change of address and/or the petitioner wanted that instead of Madras address he may be informed elsewhere, it was for him to have informed the respondents, whereas he wanted other way round thus respondents locating the whereabouts of the petitioner. Recommendations made by the Public Service Commission, copy whereof is at pages 62 to 66 (supra), completely negative the case of the petitioner. As such it cannot be said that the punishment inflicted upon the petitioner is disproportionate muchless excessive, particularly when petitioner had received the appointment letter from Hindustan Zinc Limited in the first week of May. 92 and thereafter he without adhering to the requirement of law joined the said concern. What seems to have irked him is that his services have been dispensed with by the Hindustan Zinc Limited also where as per Annexure ""M"" he was due to get promotion. This seems to have compelled the petitioner to join the Unit at Jalandhar. In case the said employer has not dispensed with the services of the petitioner, probably he

would not have bothered at all for the present inquiry. As a consequence of this discussion this plea urged on behalf of the petitioner must also fail.

Last but not the least this court cannot lose sight of the fact that petitioner was a member of the Para Military Force. Unless breach of any

provision of law in the course of inquiry was pointed out, this court ordinarily would not decide the matter as a court of appeal. No infraction of

any provision could be pointed out by the learned counsel by referring to the inquiry record, as such there are no circumstances which call for

interference in this case.

22. For the view that has been taken on the facts of this case, law cited by Mrs. Kaur on her plea that the resignation submitted vide Annexure ""D

needs to be accepted by deeming provision as well as the punishment being disproportionate to the alleged misconduct is not being noted.

23. No other point is urged.

24. As a result of aforesaid discussion there is no merit in this writ petition which is accordingly dismissed. Ex parte interim order date 7.4.2000 is

hereby vacated. Record is returned to Sh. Bhatt.