

(2019) 01 RAJ CK 0211
In the Rajasthan High Court
Case No : Civil Writ No. 1261 Of 2019

Arvind Kumar Bhatiya

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Border Security Force Rules, 1969 — Rule 19
Central Civil Services (Pension) Rules, 1972 — Rule 26(4)(iii)

Citation : (2019) 01 RAJ CK 0211

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Kshamendra Mathur

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioner aggrieved against the orders dated 13/9/2002, 22/2/2016 and 11/2/2017 and has sought reinstatement with all consequential benefits.

It is inter alia indicated in the writ petition that the petitioner was enrolled in Border Security Force on 13/10/2001 as Cook and on 14/5/2002 the resignation of the petitioner from service was accepted by the Commandant w.e.f. 17/5/2002 under Rule 19 of the Border Security Force Rules, 1969 ('the Rules, 1969') without any pensionary benefits. Thereafter, it appears that the petitioner sought withdrawal of the resignation and reinstatement, which prayer of the petitioner was rejected on 13/9/2002 (Annex.3). The petitioner thereafter, in the year 2015 again sought reinstatement in service, which representation was rejected by the Assistant Commandant, Jammu on 22/2/2016 (Annex.4) inter alia indicating that as the petitioner has submitted the application for reinstatement in service after a lapse of more than 13 years from the date of resignation from service, the same was rejected as time barred and devoid of merit. Further application made in this regard was again rejected on 11/2/2017.

It is submitted by learned counsel for the petitioner that rejection of petitioner's application seeking reinstatement by indicating that the petitioner had submitted application for reinstatement in service after a lapse of more than 13 years in terms of Rule 26(4) (iii) of Central Civil Services (Pension) Rules, 1972 ('the Rules, 1972') is baseless inasmuch as from the order Annex.3 it is apparent that the petitioner had moved the application well within time as prescribed in this regard and, therefore, the order dated 22/2/2016 being factually incorrect, the respondents be directed to reconsider the case of the petitioner.

Further submissions have been made that the order dated 13/9/2002 (Annex.3) is a non-speaking order and, therefore, also the same deserves to be quashed and set aside.

I have considered the submissions made by learned counsel for the petitioner and have perused the material available on record.

The material on record indicates that the petitioner was enrolled as a Cook on 13/10/2001 and resigned from service, which resignation was accepted w.e.f. 17/5/2002. The petitioner, thereafter, sought withdrawal of the resignation and reinstatement, which prayer was rejected by order dated 13/9/2002 (Annex.3), which reads as under:

"SUB : WITHDRAWAL OF RESIGNATION/RE-INSTATEMENT Please refer to your application dated July 2002 addressed to DG BSF, New Delhi requesting for re-instatement.

2. You had submitted resignation to the competent authority and sought interview four times for its acceptance. You were advised and given sufficient time to think over it. However, on being stressed upon time and again, your resignation was accepted at your own request. Therefore, the Competent authority has considered your request for re-instatement and rejected being devoid of merit.

Sd/-

For Commandant

89 BN BSF"

The petitioner apparently did not question the validity of the said order and after passage of over 13 years, started efforts to seek reinstatement in service and made representations in this regard.

The representation and application filed by the petitioner dated 5/11/2015 and 5/1/2016 were answered by the respondent- Assistant Commandant indicating that as the petitioner has sought reinstatement in service after a lapse of more than 13 years from the date of resignation, he was not entitled to be reinstated. The said order dated 22/2/2016 (Annex.4) is now sought to be attacked by the petitioner being contrary to the facts by indicating that the petitioner had sought withdrawal of the resignation well in time as per Rule 26(4) (iii) of the Rules,

1972.

A bare look at the order dated 13/9/2002 (Annex.3) clearly indicates that the petitioner after resigning w.e.f. 17/5/2002, sought reinstatement in July, 2002, however, the competent authority observing that as the petitioner had sought interview four times with the competent authority for acceptance of resignation and was repeatedly advised and given sufficient time to think over it, however, as the petitioner stressed upon acceptance of his resignation time and again, his resignation was accepted and, therefore, the competent authority did not find it appropriate to consider the request of the petitioner for reinstatement and rejected the request being devoid of merit.

Once a categorical denial of withdrawal of resignation/reinstatement was made by the respondents, the cause of action arose to the petitioner then & there, however, apparently, the petitioner did not raise any issue regarding rejection of prayer for reinstatement and after a passage of 13 years restarted the quest for seeking reinstatement, which the respondents, treating the same as a fresh prayer, rejected the same being highly belated i.e. 13 years from the date of resignation.

The petitioner having failed to take appropriate proceedings within a reasonable time from passing of the order dated 13/9/2002, cannot be now permitted to resurrect the lost cause of action on account of unexplained delay & laches by harping on the alleged invalidity of the order dated 22/2/2016 (Annex.4). The order as it stands, on account of the fact that the petitioner made a representation after 13 years of its first rejection, cannot be said to be otherwise incorrect.

The Hon'ble Supreme Court in *State of Uttranchal & Anr. vs. Sri Shiv Charan Singh Bhandari & Ors.* : (2013) 12 SCC 179 has observed as under:

"consideration of representation relating to a stale claim or dead grievance does not give rise to a fresh cause of action. Apparently, the petitioners have sought revival of a dead/stale claim on account of response given by the respondents relying on the judgment in case of *Madhukar (supra)*, which judgment cannot apply irrespective of the circumstances of a given case."

The above observation made by the Hon'ble Supreme Court applies on all force to the present case.

In view of the above discussion, the petition filed by the petitioner suffers from unexplained delay and laches in questioning the validity of the order dated 13/9/2002 as the petition has been filed after more than 16 years and passing of the order dated 22/2/2016 (Annex.4) by itself does not give a fresh cause of action to the petitioner and the petitioner is not entitled to any relief.

Consequently, there is no substance in the writ petition and the same is, therefore, dismissed.