
(2015) 03 CAL CK 0095
In the Calcutta High Court
Case No : Writ Petition No. 888 (W) of 2015

Debasish Biswas

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Citation : (2015) 2 CALLT 151

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Partha Pratin Roy, Sarbananda Sanyal and Sayantee Chatterjee, for the Appellant; Rajiv Lall, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.

1. The grievance of the petitioner is that specious reasons have been proffered by the respondent authorities in rejecting the petitioner's request for withdrawing the petitioner's resignation. The petitioner was a member of a disciplined force who refused to accept an order of transfer and resigned on February 10, 2003. His resignation was accepted on April 19, 2003, but with effect from February 04, 2003 since he was absent from duty from the forenoon of such day. The petitioner applied on May 24, 2003 for withdrawal of his letter of resignation. The request was summarily rejected and the petitioner instituted W.P. 7142 (W) of 2006. Such petition was disposed of on March 07, 2014. The operative part of the relevant order reads as follows:

"For the foregoing reasons, the memoranda dated 19th April, 2003 and 11th June, 2003 are not sustainable in law and accordingly the same are set aside and quashed. The memorandum dated 5th September, 2003 issued by the Commandant (Accts) Es Hqrs, C.R.P.F. shall not stand in the way towards consideration of the petitioner's claim afresh.

"In the circumstances, I dispose of this writ application directing the respondent

No. 3 to consider the petitioner's prayer for withdrawal of resignation afresh in consonance with the provisions of Rule 26 of the Central Civil Service (Pension) Rules and upon granting an opportunity of hearing to the petitioner."

2. The parties agree that in view of the second of the paragraphs extracted above, it is evident that the acceptance of the petitioner's resignation by the order dated April 19, 2003 had not been intended to be set aside though it was referred to in the first of the paragraphs quoted. In other words, it is the common case of the parties that all that the order dated March 07, 2014 required was for the appropriate authority in the Central Reserve Police Force to consider the petitioner's request for withdrawal of his resignation in accordance with law.

3. The matter was considered afresh by the Deputy Inspector General of Police, CRPF Range, Rampur who declined the permission by his order of an unspecified day of June, 2014. Though only a page of the relevant order has been appended to the petition, a copy of the entire order has been made over to the Court at the hearing. The petitioner says that despite the order on the previous petition of March 07, 2014 finding that there was no absolute time-limit prescribed by Rule 26(4) of the CCS (Pension Rules), it is primarily on such ground that the petitioner's permission to withdraw his resignation has been rejected.

4. Rule 26(4)(iii) of the said Rules permits the consideration of a request for withdrawal of resignation in public interest provided, inter alia, that the period of absence from duty between the date on which the resignation had become effective and the date on which the person is allowed to resume duty as a result of the permission to withdraw the resignation is not more than 90 days.

5. The order of April 19, 2003 made the petitioner's effective date of resignation to be February 04, 2003. Thus, the period within which the petitioner ought to have applied for permission to withdraw his resignation ought to have been 90 days therefrom, or by or about May 06, 2003. But the petitioner applied only on May 24, 2003. But the decision need not be sustained on such ground, since it is possible to contend that the requirement of the 90-day period may not be absolute, as has been held in the previous order of March 07, 2014, and that the period of 90 days should be reckoned from the time when the member is informed of the acceptance of his resignation. However, no final pronouncement on the interpretation of Rule 26(4)(iii) of the said Rules need be made on such aspect since it is evident that the respondents did not consider it to be in public interest to permit the petitioner to withdraw his resignation.

6. There is an element of subjectivity which must be allowed to the superior officers, particularly in a disciplined force. If the exercise of the subjectivity is not regulated by any statutory rules, it is the larger interest of the force and public interest that should govern the matter.

7. The relevant official who considered the application for permission to withdraw the resignation afresh was alive to the circumstances in which the petitioner had

resigned and his subsequent change of mind. Such official did not find the grounds good enough for permission being granted to the petitioner to withdraw the resignation.

8. It must be appreciated that the applicable rule allows the exercise of an element of discretion as the relevant part of the opening limb thereof provides that the appointing authority "may" permit a person to withdraw his resignation in the public interest on the grounds specified therein. It is an enabling provision that does not confer an absolute right on a person seeking to withdraw his resignation to do so. The rule merely states that if good grounds on account of public interest exist, a person may be allowed to withdraw his resignation, subject to the other conditions.

9. In a disciplined force as the CRPF, it is necessary for the Courts to not interfere with matters of discipline unless a case of gross irregularity or mala fides or like nature is made out. It is also not desirable for the chain of commands to be disrespected, unless absolutely necessary.

10. It is evident that the appropriate official did not find good grounds having been made out in public interest for the petitioner to be permitted to withdraw his resignation. It was a possible view on the set of facts. Further, considering the circumstances in which the petitioner disobeyed an order of transfer and sought to resign in a huff, neither the decision impugned herein nor the decision-making process can be seen to be arbitrary or unreasonable.

11. W.P. 888 (W) of 2015 is dismissed. There will be no order as to costs.

Certified website copies of this order, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.