

(2017) 10 DEL CK 0153

In the Delhi High Court

Case No : Civil Writ Petition No. 12171 Of 2016

Deepak Verma

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 27-10-2017

Acts Referred:

Citation : (2017) 10 DEL CK 0153

Hon'ble Judges : Sanjiv Khanna, J;Navin Chawla, J

Bench : Division Bench

Advocate : Deepak Verma, Anurag Ahluwalia, Apporva Saxena

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J

1. Deepak Verma, who appears in person, has filed the present writ petition for setting aside non-approval letter No.133/Reinstatement/GS dated 11th July, 2016 issued by the Commandant of the Officers Training Academy, Chennai (OTA, for short). The petitioner had prayed for re-instatement/re-induction as a cadet in the Indian Army and thus impugns refusal of re-instatement/re-induction.

2. The petitioner pursuant to his selection was asked to report to the Adjutant OTA, Chennai on 25th March, 2016 vide letter dated 11th March, 2016.

3. On reporting, the petitioner was made to undergo a fresh medical examination on 3rd April, 2016 at the Military Hospital, Chennai, where doubts were expressed about his cardiac and heart fitness. Doctors had recommended temporary medical rejection. On 6th April, 2016, the petitioner was examined by the Senior Cardiologist of the Appeal Medical Board at Command Hospital, Bangalore and declared to be fit.

4. The petitioner was enrolled and assigned the serving certificate on 7th April, 2016.

5. On 25th April, 2016, the petitioner submitted his application for resignation. We shall be referring to the contents of the resignation application subsequently.

6. The application for resignation was accepted/approved by the Commandant, OTA, Chennai vide authorization GS Br ION No. 133/GS dated 4th May, 2016. The petitioner was informed vide movement order dated 7th May, 2016 and he left the OTA, Chennai on the same day.

7. On 7th June, 2016, the petitioner returned to OTA, Chennai and made an application to rejoin training.

8. On 11th July, 2016, the petitioner was informed that the Competent Authority had rejected his request to rejoin training. The petitioner persisted and continued to make representations. On request, he was given a hearing by the Commandant, OTA. By letter dated 24th November, 2016, the petitioner was communicated that the Competent Authority, after examining his case in detail, had rejected his prayer.

9. The first contention is that the petitioner's resignation was not voluntary and, therefore, invalid in law. The petitioner asserts that the delay in enrollment by 7 days due to wrong medical opinion, had an adverse impact, as the petitioner was unable to adjust and compete with the candidates who had joined earlier on 1st April, 2016. Other candidates had the benefit of proper induction, orientation, and had settled to the regimented lifestyle at the Academy. The petitioner found it difficult to cope with the fast paced training, especially when other candidates had an head start advantage. The petitioner had struggled to acquaint himself with the basic curriculum and had faced difficulty in interacting with other candidates and familiarizing himself with the rules.

10. Secondly, the petitioner received information regarding his mother's serious illness. She being in a critical condition had to be hospitalized on 24th April, 2016. The petitioner wanted to meet her and had accordingly requested the Training Officer for leave, which was denied as the petitioner had joined late. Thus, owing to these factors, the petitioner had, under compulsion, submitted the letter of resignation. The resignation letter, therefore, lacked voluntariness.

11. The contention of the respondents, on the other hand, is that the aforesaid grounds are a pretence, make-believe and sham cover-up, for the petitioner was unable to adapt to the regimented and disciplined life at the OTA, Chennai. The standards were exacting and tough, and the petitioner was found to be wanting, diffident and indisposed. The respondents have placed on record photocopy of the application for resignation dated 25th April, 2016 filled up and submitted by the petitioner. The resignation application did not indicate or refer to mother's illness or late joining. The application cites "personal reasons" as the reason for resignation.

12. We would, for reasons recorded below, reject the first contention. The application for resignation is a detailed one and was required to be filled up by

the applicant in his own handwriting. This application for resignation was thereafter marked to the senior officers, who have recorded their comments. The Platoon Commander in his comments had stated:-

"Offr Cdt Deepak Verma has showcased a weak mindset since joining the Academy and has not been able to cope up with the trg. It is Recommended the Offr Cdt be allowed to resign"

The Company Commander had made the following comments:-

"GC Deepak Verma has been interviewed and counselled by me regarding the implications of his decision. However, the Officer Cadet wishes to withdraw out of his own accord and it is "R" that he should be allowed to do the same. "

There are also remarks of the Training Battalion Commander:-

"GC Deepak Verma has been interviewed and counseled. He is not interested in continuing the trg and wishes to resign. The GC also lacks aptitude for working in the Army and is recommended to be allowed to resign from the Academy."

13. Consent of the parents/guardian was required to be submitted with the letter of resignation. Parents of the petitioner had visited the Academy on 20th April, 2016 and had interacted with Officers and the petitioner. The petitioner's father, who is a retired Lance Naik from the Army, had filled up the parent's/guardian's consent for resignation on 20th April, 2016, which read:-

"PARENT"S/GUARDIAN"S CONSENT FOR RESIGNATION

1. I, NK (Retd) Jaikant Verma son of Shri Om Prakash Verma father/guardian of No.28107 GC/LC Deepak Verma of SSC-103 Course, who is presently undergoing pre-commission training at OTA CHENNAI agree that his/her resignation be accepted as requested.

2. I further declare that I accept all financial liabilities to the state on account of resignation by my son/daughter/ward in accordance with rule and regulations in vogue.

Dated: 20 Apr 2016

Place: DELHI

Signature

Name NK (Retd) Jaikant Verma

Address RZF-1/173C

Mahavir Enclave, Dwarka

New DELHI-110045"

14. During the course of hearing, the petitioner's father, who was also present in the Court, had denied signing the parent's/guardian's consent for resignation.

Surprisingly this plea has neither been taken in the writ petition nor in the rejoinder affidavit. We would reject the said plea, for it is the petitioner who had submitted the application for resignation including the parent"s/guardian"s consent for resignation. The parent"s/guardian"s consent was witnessed by Amandeep Singh and Rajesh Kaushik, who were residents of Delhi. The petitioner"s father was/is a resident of Delhi. The date mentioned by the witnesses/guarantors is 20th April, 2016. Thus, the thought of resignation was not a hasty or spur-of-the-moment decision, but a considered choice. Father of the petitioner was aware and had consented.

15. Noticeably, the Platoon Commander and Company Commander, who were both holding the rank of Major in the Army, as well as the Battalion Commander have written detailed notes which indicate that the petitioner was spoken to and counseled. He was explained about implications of his decision but he persisted on resigning. The petitioner had shown no interest in continuing the training and required aptitude for joining the Army. These notes were recorded on 2nd May, 2016, indicating that the petitioner had not changed his mind from 25th April, 2016 till 2nd May, 2016.

16. The petitioner did not leave the Academy immediately on tendering his resignation. The application for resignation had remained pending consideration for nearly 10 days with the Commandant, OTA who had approved of the same on 4th May, 2016. Consequently, on 7th May, 2016, movement order was issued and given to the petitioner. This order records that the petitioner was struck off strength on 7th May, 2016 in the afternoon. He left OTA, Chennai on the same day. Thus, there was a time gap of nearly 12 days between the application for resignation, on 25th April, 2016, and the movement order issued on 7th May, 2016. It is apparent that the petitioner had not changed his mind or indicated about withdrawal of the resignation application. He was clearly reluctant and averse to joining the Army. It would seem that the petitioner"s parents" wishes and desires were different.

17. The petitioner has also filed a copy of the discharge slip of his mother dated 27th April, 2016, which states that his mother was admitted to a private hospital-cum-maternity centre on 24th April, 2016 at 7.30 A.M. She was found to be Widal positive. She was discharged on 27th April, 2016. The petitioner had remained in the Academy, as noticed above, till 7th May, 2017.

18. What is, however, more pertinent and negates this submission is the petitioner's letter requesting reinstatement. This undated letter in the handwriting of the petitioner which was given to the respondents on 7th June, 2016, reads as under:-

"Subject:- Permission to Rejoin Course SSC-103

Respected Sir,

1. I GC No.28107, Deepak Verma was under training for the course SSC-103.

Due to some personal problems in my family, I could not adapt to the training conditions & withdrawn from the training.

2. However, I realized my mistake of missing the golden opportunity to serve the nation, make my parents proud. Also, I realized that I missed a stable & respectful carrier (sic) in Army.

3. I Request you to give me a chance to correct my mistake & Rejoin the training for the SSC-103 course and prove myself & make my parents proud. I promise you to undergo the training with full dedication & effort & perform good.

Kindly give me the opportunity to correct my mistake.

Your faithfully

DEEPAK VERMA

GC No.28107 "

19. The aforesaid letter does not refer to his mother"s illness or refusal of leave as the reason or ground why the petitioner had resigned. The petitioner did not state that he was unable to cope with the training as he had missed the initial training. The reason given was personal problems, due to which he could not adapt to the training conditions. On returning home, the petitioner had realized his mistake and felt that he had missed a golden opportunity to serve the nation. He wanted to make "his parents proud". The Army ensured a stable and respectful career and therefore he had requested for another opportunity to correct "his mistake".

20. In the aforesaid background, we would reject the first contention of the petitioner that the resignation application was not voluntary and was under compulsion and, therefore, should be treated as bad in law and void ab initio. It is difficult to agree and accept the said contention in view of the aforesaid factual matrix.

21. The petitioner"s second contention is that the application for resignation was never accepted. Thus the petitioner, under law, was entitled to recall or withdraw his resignation, which was done vide undated letter delivered to the respondents on 7th June, 2016.

22. The original records reveal that the petitioner had executed and signed a certificate on 28th April, 2016 with regard to reinstatement, which reads:-

"It is certified that provisions contained in Para 59 of Adm Instructions have been explained to me personally after I submitted the application for resignation on my personal request and before officially leaving the Academy. I understand that in the eventuality of reinstatement, I have to apply within 30 days of submission of application for resignation. "

23. Our attention was drawn to the joining instructions for Officer Cadets issued by the Additional Director General, Recruitment and applicable to OTA, Chennai.

Paragraph 47 of the said instructions reads as under:-

"Resignation

In case a trainee is unable to cope up with the training at OTA or is unable to adapt to the service environment, he / she may voluntarily resign from the Academy after reimbursing the cost of training received (presently @ Rs 8785 per week) apart from allied charges as fixed by the government from time to time. In case a Officer Cadet prefers to resign during the course of training, following actions will be undertaken by him / her:-

(a) Submit an application (in duplicate) along with consent of parents/guardians. Format of the application is given at Annexure 8.

(b) Unconditional Resignation. Resignation submitted by a Officer Cadet should be un-conditional. On approval of the resignation by competent military authorities, a Officer Cadet is not permitted to withdraw the resignation, or to seek re-instatement on change of mind, unless in exceptional circumstances.

(c) Reimbursement. Reimbursement of the cost of training will include:- (i) Rs 8,785/- per week (at present rates) towards cost of training received till the day of leaving the Academy. (ii) Cost of all items of clothing issued to Officer Cadet, including stitching charges of military uniforms. (iii) Full cost of worn out/lost equipment/items.

We note that in the present case the resignation letter/application was given in accordance with the aforesaid clause in the requisite format.

24. The petitioner has also relied upon paragraphs 48 and 49 of the aforesaid joining instructions, which read as under:-

"48. Resignation to Join Other Service Training Establishments. In case a Officer Cadet resigns to join any other training establishment of the Army, Navy or Air Force, no charge will be levied for the training received. However, Officer Cadets will be required to pay for worn out/lost items of uniform/equipment.

49. Commandant, OTA is the competent authority to permit the Officer Cadets resigning to go home or to their concerned parent departments in Civil Government, pending acceptance of the resignation by Integrated Headquarters of MoD (Army), after they have paid all the dues towards cost of training or the equipment used/worn out during training. Officer Cadets will remit the cash allowance paid from stipend and AGI premium remittance to AGI directorate.

Paragraph 48 deals with resignation of an Officer Cadet, who wants to join any other training establishment of the Army, Navy or Air Force. Paragraph 48 would not apply. Paragraph 49 states that the Commandant, OTA is the Competent Authority to permit Officer Cadets to resign, to go home, or to their parent department in civil government. This could be pending acceptance of the resignation by the Integrated Headquarters of the Ministry of Defence (Army). However, such cadets would have to pay all the dues towards the cost of training,

etc. In view of paragraph 49, it was submitted that the acceptance of resignation has to be by the Integrated Headquarters of the Ministry of Defence and not by any other authority.

25. The respondents, on the other hand, have relied upon paragraph 54 of the Administrative Instructions issued by the Army Training Command, which reads:-

"54. Resignation

(a) GCs/LCs Resignation of GCs/LCs will be unconditional. No conditions such as waiver of cost of training etc will be accepted. The Commandant will be the approving authority for accepting resignations of GCs/LCs. After approving resignation, the same will be intimated to HQ ARTRAC, DG MT (MT-6) and Recruiting Directorate. Provisions of IHQ of MoD (Army) letter No A/37092/GS/MT-6 dated 01 May 2012 will be adhered to Format of application for resignation is attached at Appendix "H".

As per the aforesaid joining instruction, the resignation should be unconditional and no conditions such as waiver of cost of training etc. were acceptable. The Commandant, OTA has been described as the Competent Authority to accept the resignation. After approval, the same has to be intimated to the Headquarters and the Recruiting Directorate.

26. In the present case, the Commandant had approved the resignation on 4th May, 2016 and this fact was also mentioned in the movement order issued to the petitioner on 7th May, 2016, when the petitioner was allowed to leave the Academy and the Struck off Strength certificate was issued.

27. There is a divergence or difference between the administrative instructions and the joining instructions for Officer Cadets. However, the stand of the respondents is that the Commandant is always treated as Competent Authority in case of cadets. This is correct. The application for resignation dated 25th April, 2017 had, in paragraph 11, stated as under:-

"11. (a) Parent's/guardian's consent is attached, duly witnessed.

(b) I understand that once I resign I am not permitted to withdraw my application for resignation."

The petitioner had also given a certificate of undertaking dated 25th April, 2016 stating that approval of resignation would be considered provisional till accepted by the Competent Authority. Thereafter, on 28th April, 2016, the petitioner had given a certificate regarding reinstatement, which has been quoted in paragraph 22 above. The certificate regarding reinstatement had made specific reference to the Administrative Instructions, which were explained to the petitioner. The petitioner was made to understand that to seek reinstatement, he must apply within 30 days of submission of the application for resignation. The application for resignation was made on 25th April, 2016 and that 30 days would commence therefrom. As noted above, the petitioner did not submit application for

reinstatement within 30 days and the same was made on 7th June, 2017. The relevant instruction applicable is paragraph 59 of the Administrative Instructions, which was alluded to in the undertaking given by the petitioner. Paragraph 59 of the Administrative Instructions reads as under:-

"59. Normally a GC/LC will not be allowed to rejoin after resigning from the Academies. However, in exceptional circumstances, a GC/LC may be reinstated and cost of training refunded, under the following conditions:-

(a) He/she has initiated the application for reinstatement within 30 days of submission of application for resignation earlier. Commandant of IMA/OTA, Chennai/OTA, Gaya will approve such reinstatement and intimate the same to HQ ARTRAC and IHQ of MoD (Army), DG MT.

(b) In case Commandant of IMA/ OTA, Chennai/OTA, Gaya does not reinstate a GC/LC and if the application for reinstatement has been initiated within the 30 days period as specified above, the case to be referred to IHQ of MoD (Army), DGMT along with recommendations of HQ ARTRAC for final decision. Reasons for rejection of the application will also be intimated by the Academy.

(c) Applications for reinstatement should be received at IMA/OTA, Chennai/OTA, Gaya within 10 days of date of initiation, to ensure that the provision is not misused. Any application received at the Academies beyond 40 days of submission of application for resignation earlier, will be deemed to be out of purview of this provision. Such applications, including applications initiated beyond the 30 days period, as specified above, will be referred to HQ ARTRAC and IHQ of MoD (Army), DGMT before rejection.

(d) Any GC/LC who had resigned due to medical reasons will not be reinstated

(e) The GC/ LC should not have submitted such an application earlier."

28. Paragraph 59 of the Administrative Instructions, which gives liberty to a cadet who has resigned to ask for reinstatement, prescribes a period of thirty days from the date of submission of application of resignation, and not from the date when the resignation was accepted or the acceptance was conveyed or the date from which the cadet was struck off the strength. The subsequent dates could vary and would be different in each case. In view of the aforesaid position, we have to hold that the petitioner's request for reinstatement was time barred under paragraph 59 of the Administrative Instructions as it was made beyond the period of thirty days from the date when the petitioner submitted the application for resignation.

29. We would hesitate to interfere with the said paragraph, which is not under challenge, for obvious reasons viz. the time limit, etc. for it is a matter of policy. Fixing the said period ensures objectivity and transparency. The certificate signed by the petitioner on 28th April, 2016, had stipulated that he could apply within thirty days of submission of the application of resignation. The delay in making the request for reinstatement would also refute and contradict the argument that

the initial letter of resignation was under compulsion and not voluntary. The provision enables cadets to reconsider impetuous and reckless decisions. However an outer time limit has been fixed.

30. The petitioner, during the course of hearing, had made an emotional plea in which his father had also joined, imploring that he wants to join the Army and that on re-consideration he has realized that his earlier resignation was a big mistake. It is not that we were not moved by the sentiment expressed. However, accepting the plea in the present case would set a precedent which would be contrary to the power of judicial review and would not be conducive, but rather detrimental, to the discipline required from those who seek to join as Officers in the Army. Indulgence, if shown, would be inappropriate and unsettling. The respondents are conscious that young men/women who are admitted as cadets may find it difficult to cope with the strenuous and disciplined regime in the Academy. This is apparent from the interaction and counseling sessions, which the Officers had with the petitioner. As noted above, the petitioner had called his parents, who had interacted with him on 20th April, 2016. The parents were disappointed and concerned, for the petitioner wanted to leave the Academy and did not want to join the Army. This is evident when we read the letter for reinstatement. The respondents, on the basis of their experience and wisdom, give an option/ choice to Cadets who resign to subsequently make a request for reinstatement. The time limit mandated must be adhered to and complied with. Reinstatement is not a right, but a concession granted, which should be availed within the time stipulated and fixed.

31. While considering the aforesaid conflicting positions, the Court has to strike a balance between the prayer made and the occupational mandate and discipline required. In the present case, we do not think we can grant indulgence contrary to the stipulation to the petitioner.

32. Counsel for the petitioner had made reference to decision of this Court dated 26th March, 2012 in Writ Petition (C) No. 1143/2011, Lady Cadet Shivanjali Sharma versus Union of India and Others. In the said case, the Lady Cadet had suffered an injury on account of a fall in the Academy. In spite of treatment in the Military Hospital, she did not get relief as the injury was misdiagnosed. The Court held that the cadet had resigned under compulsion so as to avoid aggravation of the injury and to pursue treatment privately. The petitioner therein had fractured the last vertebra of her backbone, commonly called the tailbone, which was diagnosed after she had left the Academy. These facts were highlighted in the statutory complaint to the Chief of Army Staff with the request that the petitioner therein should be detailed for training in the next course. However, the request was rejected on the ground that physically and mentally, the petitioner therein was far below the required standards and was an unfit cadet since she had repeatedly reported sick on experiencing the strain of the daily routine at the Academy. The facts of the said case would reveal that the petitioner therein had resigned on 30th October, 2010 and the letter deemed as

a request for revocation of resignation was dated 16th November, 2010. The petitioner had been allowed to go home on 2nd November, 2010. The gap or time difference between the letter of resignation and reinstatement was less than thirty days. The facts, therefore, were different and distinct.

33. The petitioner has submitted that in *Lady Cadet Shivanjali Sharma* (supra), the Division Bench had examined the question of effect of withdrawal of resignation before its acceptance, and opined that the acceptance of resignation by the competent authority would terminate the employer-employee relationship. Our attention was drawn to the judgments referred. These judgments would not be relevant in the present case for we have accepted the plea of the respondents regarding acceptance of resignation on 4th May, 2016 by the Commandant of the Academy. Thereafter, the movement order dated 7th May, 2016 was issued. Thus, the petitioner's plea and contention that the resignation was not accepted is incorrect and has to be rejected.

34. Our attention was also drawn to *Municipal Corporation of Delhi versus Dinesh Kumar Sangal*, 171 (2010) DLT 611 (DB), which was a case of withdrawal of resignation before acceptance. It was also observed that the resignation was not tendered by a person who was acting with a free mind. This judgment refers to the communication of acceptance, an issue which has been examined and dealt with in *Raj Kumar versus Union of India*, AIR 1969 SC 180. The Supreme Court held that where a public servant has sent a letter of resignation, his services would normally stand terminated from the date on which the letter of resignation was accepted by the appropriate authority. In the absence of any law or rule governing the conditions of service to the contrary, it would not be open to the public servant to withdraw his resignation after acceptance. However, till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae to withdraw the resignation, but not thereafter. At the same time, undue delay in intimating the public servant concerned may justify the inference that the resignation had not been accepted. However, where the resignation has been accepted within a short period, but the order was not immediately implemented to relieve the applicant, the public servant cannot profit by the delay in intimating acceptance or in relieving him from duties. Similarly, the Supreme Court in *Chand Mal Chayal versus State of Rajasthan*, (2006) 10 SCC 258 has held that after acceptance of resignation, the jural relationship between the employer and employee ceases and thereafter the employee cannot claim withdrawal of resignation or reinstatement. This judgment was with reference to *Rajasthan Subordinate Courts" Ministerial Establishment Rules, 1986*.

35. Rules governing service conditions may vary and in the present case there is a stipulation that a cadet who submits his resignation can move an application seeking reinstatement only within thirty days of making the application. The petitioner's request, being beyond this period, cannot be entertained.

36. In view of the aforesaid discussion, we do not find any merit in the present

writ petition and the same is dismissed. However, in the facts of the case, there would be no order as to costs.