
(1998) 03 AHC CK 0116
In the Allahabad High Court
Case No : Special Appeal No. 893 of 1995

Dinesh Chand Gupta

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 03-03-1998

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 4, 6
Central Reserve Police Force Rules, 1955 — Rule 16, 17
Constitution of India, 1950 — Article 226

Citation : (1998) 2 AWC 1454 : (1998) 79 FLR 941 : (1998) 3 UPLBEC 2305

Hon'ble Judges : D.P. Mohapatra, C.J;S.R. Singh, J

Bench : Division Bench

Advocate : S.R. Singh and P.K. Singh, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Singh, J.—This appeal is directed against the judgment and order dated 25.4.95 passed by the learned single Judge by which the Civil Miscellaneous Writ Petition No. 14143 of 1997 filed by the petitioner seeking relief of writ of certiorari quashing the order dated 23.6.93 passed by the Commandant 102 R.A.F. Battalion C.R.P.F., was dismissed by the learned single Judge. The Commandant 102 Bn R.A.F., C.R.P.F, by the order dated 23.6.93 had accepted the resignation tendered by the petitioner-appellant and accordingly discharged him from service with effect from 30.6.93 (A.M.).

2. It is the case of the appellant that he had submitted his resignation under compelling circumstances but before acceptance of his resignation, he moved an application on 25.6.93 for withdrawal of the same. The stand taken by the respondents is that the appellant never sought for withdrawal of his resignation prior to its acceptance. The learned single Judge dismissed the writ petition holding that the case on hand was not a fit case for Intervention and that no Justifiable ground had been made out for interference by the Court in exercise of its extraordinary Jurisdiction envisaged under Article 226 of the Constitution of

India. The learned single Judge, albeit, noted the contention put forthwith on behalf of the respondents that the appellant had never sought for withdrawal of his application seeking discharge from service but recorded no finding on the issue.

3. The application seeking voluntary discharge from service was given by the appellant on 12.6.93 along with an undertaking that he would not come up for re-entry in the service after discharge. The application was treated as a letter of resignation which was accepted vide order dated 23.6.93 to be effective from 30.6.93 (A.M.). The said order dated 23.6.93 reads as under :

"Resignation tendered by No. 850835211 C.T. Dinesh Chand Gupta of this Unit is hereby accepted with effect from 30.6.93 (A.N.) under Rule 17 of C.R.P.F. Rules. 1955 read with Schedule to C.R.P.F. Act. 1949 by waiving the usual period of notice as a special case.

He will be relieved on discharge from service at his own request with effect from 30.6.93 (A.M.) after clearance of dues and depositing the kit articles etc. He will, accordingly, be deemed to have been struck off from the strength of 102 Bn. with effect from the same date i.e. 30.6.93 (A.N.)."

4. We have had heard Shri Sita Ram Singh, learned counsel for the petitioner and Shri R. C. Shukla, learned counsel for the respondents on 8.7.97, 23.7.97, 7.8.97 and finally on 9.1.1998. Considering the submissions made by the learned counsel appearing for the appellant and the allegation made in paragraph 14 of the affidavit filed in support of the stay petition that the appellant had submitted several representations starting from 25.6.93 seeking withdrawal of his letter of resignation-cum-discharge from service, respondents were directed to file an affidavit stating therein if the alleged letters of the appellant seeking withdrawal of his resignation were received by the concerned authority and if so, what action was taken thereon. A supplementary counter-affidavit along with the application dated 19.9.97 came to be filed in the Court during the course of arguments on 9.1.1998. The plea that the petitioner had withdrawn his resignation before it was accepted, which Sri Sita Ram Singh, learned counsel for the petitioner/appellant brought to bear on the basis of the averments made in para 14 of the affidavit filed in support of the stay petition, does not commend itself for acceptance in view of the categorical averment made in paragraph 8 of the writ petition to the effect that "due to fast running events the petitioner forgot to withdraw his discharge application before proceeding on leave," The petitioner had admittedly moved an application dated 23.6.1993 for being granted 10 days' casual leave on ground of his own marriage. It has come in the supplementary counter-affidavit dated 19.9.97 filed by Sri S. Mukherjee. Commandant 101 Bn. R.A.F., C.R.P.F., Allahabad that the appellant reported on 7.7.1993 after expiry of leave granted to him in connection with his own marriage "and proceeded on discharge after clearance". It is thus eloquent that till then, no objection was raised by the appellant that he had submitted any application for withdrawal of his resignation. The plea that the appellant had

withdrawn his resignation before it was accepted, sought to be raised in this appeal is thus de hors any basis, and, therefore, it cannot be accepted.

5. The learned counsel for the petitioner then canvassed that the appellant was arbitrarily balked of leave prayed for on the ground of his mother's illness and he was goaded into writing a letter for discharge from service by some freak state of mind and in the circumstances application seeking voluntary discharge from service intending to accentuate the urgency for leave which was interpreted by the respondents as letter of resignation, cannot be said to have been given with a free mind. In the above perspective, we find that the petitioner moved the application seeking discharge from service on 12.6.93 and the same day, he gave undertaking that he would not claim being admitted back to service after discharge. From the undertaking which finds place on the record of the case, it is evident that the appellant had been borne in on by his superior officer in detail about the likely consequences which might stare in the face of the appellant in uncertain and difficult economic era after his discharge. The discharge prayed for, was given *Imprimatur* vide order dated 23.6.93 and the petitioner was communicated with vide letter dated 25.6.93 that he was discharged from service with effect from 30.6.93. It was imperative for the appointing authority to have adverted to the question if in the fact-situation the order of discharge could be said to be impaired because the appellant had prayed for the discharge from service under an Impulse which seemingly overshadowed all senses and reasoning and blinded him to its consequences. We are of the considered view that the attending circumstances and fact-situation in which the resignation if at all, was tendered, were not altogether irrelevant. The appointing authority ought to have borne in mind while forming opinion if it was a fit case to allow the appellant to resign or it would be unfair to accept his resignation. It must be borne in mind that there is scarcely any unreviewable sphere of administrative action taken by public authorities in discharge of their public function.

6. Lastly, the learned counsel for the appellant canvassed that the order of discharge of appellant was not in accordance with the provisions of the Central Reserve Police Force Act, 1949 those of the Central Reserve Police Force Rules, 1955. In order to appreciate the contention advanced by the learned counsel appearing for the appellant, we may advert to the relevant provisions embodied in the Act and the Rules made there under. Section 6 of the Act postulates that no member of the Force shall be at liberty to (a) resign his appointment during the term of his engagement except before the expiration of the first three months of the service : or (b) withdraw himself from/or of any of the duties of his appointment without the previous permission in writing of the Commandant or Asstt. Commandant or any other officer authorised by the Commandant to grant such permission. Rules 16 and 17 of the Rules too being germane, are abstracted below :

"16. Period of Service.--(a) All members of the Force shall be enrolled for a period of three years. During this period of engagement, they shall be liable to

discharge at any time on one month's notice by the appointing authority. At the end of this period those not given substantive status shall be considered for quasi-permanency under the provision of the Central Civil Services (Temporary Service) Rules, 1965. Those not declared quasi-permanent under the said rules shall be continued as temporary Government employees unless they claim discharge as per Schedule to the Act. Those who are temporary shall be liable to discharge on one month's notice and those who are quasi-permanent shall be liable to discharge on three months' notice in accordance with the said rules, as amended from time to time.

(b) Should the Central Government decide at any time to disband the Force or any part of it either before termination of the period for which a member of the Force is enrolled or at any time thereafter, he shall be liable to discharge, without compensation from the date of disbandment.

(c) No member of the Force shall withdraw from the duties of his office without the express permission of the Commandant or an accredited gazetted officer.

(d) The appointing authority may, during the period of initial appointment of a member of the Force appointed u/s 4 of the Act, permit him, for good and sufficient reason, to resign from the Force with effect from such date as may be specified in the order accepting his resignation ;

Provided that on the acceptance of his resignation any such member of the Force shall be required to refund to the Government all the cost of training imparted to him in the Force or a sum equal to three months' pay and allowances, received by him prior to the date of his resignation whichever is less.

Explanation.--(1) For the purpose of this sub-clause "during the period of Initial appointment shall mean the period before a member of the Force is declared quasi-permanent.

(2) The appointing authority may refuse to permit a member of the Force to resign if any emergency has been declared in the country either due to internal disturbances or external aggression.

(3) The appointing authority may give substantive status to such members of the Force as are found suitable in all respects.

17. Discharge.--Subject to the provisions of the Schedule appended to the Act, any member of the Force shall at any time before he has completed three months' service or after the completion of the full period of service for which he is engaged, be entitled to claim his discharge from the Force by applying to his appointing authority through the proper channel."

7. The impugned order of discharge purports to have been issued under Rule 17 of the Rules read with Schedule to the Act. The Schedule in so far as it is relevant reads as below :

"After you have served in the Force for such period as the Central Government

may prescribe, you may, at any time when not on active duty, apply for discharge, through the officer to whom you may be subordinate, to the Commandant and you will be granted your discharge after two months from the date of your application, unless your discharge would cause the vacancies in the Force to exceed one-tenth of the sanctioned strength in which case you shall be bound to remain until this objection is waived or removed. But when on active duty, you shall have no claim to a discharge, and you shall be bound to remain to do your duty until the necessity for retaining you in the Force ceases when you may make your application in the above-mentioned manner :

Provided that, if you wish to withdraw from the Force, you may submit your resignation at any time before the expiration of the first three months of your service, but not afterward until the completion of the period prescribed as aforesaid ; the Commandant may either accept your resignation forthwith or at the end of three months the date of its receipts :

Provided also, that the Commandant may, if he thinks fit, allow you to resign at any time on your giving three months" notice of your wish to do so.....".

8. A conjoint reading of Section 6 of the Act, Rules 16 and 17 of the Rules and the Schedule to the Act makes it abundantly clear that "discharge" and "resignation" are treated differently. All members of the Force are enrolled for a period of three years and during this period of engagement, they are liable to discharge at any time on one month"s notice by appointing authority at the end of the Initial period of enrolment. Those not given substantive status are to be considered for quasi-permanency under the provisions of Central Civil Services (Temporary) Rules, 1965 and those not declared quasi-permanent under the said Rules, shall be treated as temporary Government employees unless they claim discharge as per Schedule to the Act. Those who are temporary shall be liable to discharge on one month"s notice and those who are quasi-permanent shall be liable to discharge on three months" notice in accordance with the said Rules as amended from time to time. A member of Force can claim his discharge from the Force as of right by applying to his appointing authority through the proper channel at any time before he has completed three months" service or after the completion of the full period of service for which he is engaged.

9. But according to "Recruiting Roll" contained in the Schedule to the Act and Rule 16 (d) of the Rules, no member of the Force has the liberty to resign his appointment except before the expiration of the first three months of his service. The appointing authority has indubitably been given discretion to permit a member of service, "for good and sufficient reason", to resign, "during the period of initial appointment" from the Force with effect from such date as may be specified in the order accepting resignation. The discretion of the appointing authority is not unrestrained by fetters. There must be good and sufficient/cogent reason for accepting the resignation during the period of initial appointment and the appointing authority may refuse to permit a member of the Force to resign if any emergency has been declared in the country either due to

internal disturbances or external aggression. The expression "during the period of initial appointment", connotes the period before a member of the Force is declared quasi-permanent. The Rules do not contemplate resignation by a member of the Force after he has been given substantive status in the Force but the second proviso to the "Recruiting Roll" embodied to the Schedule to the Act, empowers the Commandant to allow, "if he thinks fit" a member of the Force to resign "at any time" on such member giving three months" notice of his wish to do so. There is no provision enabling the Commandant to waive the notice period. In the instant case, the appellant was inducted for the post of constable in the C.R.P.F, and was enlisted on the Recruiting Roll in the year 1985 on final agreement in the prescribed form and was accordingly appointed constable which duty he joined on 27.6.1985. Admittedly, at the time of his discharge, the appellant was harnessed on active duty in Amritsar. In case, the appellant had demitted the service during the Initial period of his appointment, the appointing authority could have permitted the appellant for "good and sufficient reason" to resign from the Force. The appellant was enlisted in service way-back in 1985 and from his affidavit dated 23.8.93, a photocopy of which has been annexed to the supplementary counter-affidavit dated 19th September. 1997 and which was admittedly received in the office of the Commandant on 19.10.93, it appears to us that the appellant had acquired "substantive status" in the Force. Since the appellant had acquired "substantive status" in the Force, the question of resigning as of right from Force would not arise. The Commandant could, of course, have permitted the appellant to resign from the Force if he thought it fit to allow the appellant to resign on his giving three months" notice of his desire to do so, as comprehended by the second proviso to the Schedule. The order of discharge purports to have been issued under Rule 17 of the Rules though it is termed as resignation. Related provisions contained in the Act, the Schedule and the Rules do not shore up the order of discharge as such and the resignation could not have been accepted by the appointing authority except on proper self-direction to the conditions stipulated in Rule 16 (d) of the Rules and/or those of the second proviso to the Schedule appended to the Act. The order of discharge per se does not connote that the Commandant/Appointing authority adverted itself to the relevant provisions discussed above and then accepted the application moved by the petitioner-appellant seeking voluntary discharge from service. The expression "if he thinks fit" used in this second proviso is significant. While permitting a member of the Force who has acquired substantive status in the Force, to resign, the Commandant has to keep in mind the interest of the Force as well as the gravity of the circumstances in which the resignation is given coupled with the fact if acceptance of the resignation in such circumstances, would be unfair and unjust to the concerned member of the Force. A reasonable balance between the two needs to be struck by the Commandant. Before permitting a substantive member of the Force to resign, the appointing authority must address himself to all the aspects relevant to the matter which in the Instant case does not seem to have been done by the appointing authority and the resignation was accepted in a perfunctory manner and the representation

filed by the petitioner seeking reinstatement in service, came to be rejected by the Commandant vide order dated 25.2.94 as "being devoid of merit". The learned single Judge in our opinion, was not right in holding that no Justifiable ground had been made out for intervention by this Court.

10. In the result, the appeal is allowed. The Judgment and order of the learned single Judge is set aside and the order of discharge dated 26.6.93 and the order dated 25.2.94 passed by the I.G.P., R.A.F. C.R.P.F., New Delhi rejecting the appellant's representation are quashed. The appellant shall be reinstated in the Force with continuity in service but in the facts and circumstances be entitled to only one-fourth of his back salary and emoluments. Parties shall bear their respective costs.