

**(2021) 02 GAU CK 0005**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 4150 Of 2019**

Hitesh Talukdar

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

**Date of Decision :** 01-02-2021

**Acts Referred:**

Central Reserve Police Force Act, 1949 — Section 4, 4(1), 5, 6  
Central Civil Services (Pension) Rules 1972 — Rule 26, 26(4)  
Central Reserve Police Force Rules, 1955 — Rule 7(b), 16, 16(a), 17, 17A  
Constitution Of India, 1950 — Article 226

**Citation :** (2021) 02 GAU CK 0005

**Hon'ble Judges :** Manish Choudhury, J

**Bench :** Single Bench

**Advocate :** N Barman

**Final Decision :** Allowed

## Judgement

1. This writ petition under Article 226 of the Constitution of India is preferred assailing two orders dated 07.08.2018 and 26.09.2018 and seeking

setting aside of the afore-mentioned two orders. The petitioner has also sought for a direction for his re-instatement in the post of Head Constable,

General Duty in the Central Reserve Police Force (the CRPF or the Force, for short).

2. It is the case of the petitioner that he was appointed as a Constable, CRPF on 04.07.2000 and after joining the service in the Force, he completed

the necessary training. Thereafter, he continued to serve the Force at different places. Because of his sincerity in service, he was selected for SPG in

the CRPF and he discharged such duties from 2008 to 2015. In the year 2016, he was promoted to the post of Head Constable (HC)/General Duty

(GD) and was posted in 68 Bn, CRPF at Tinsukia.

2.1. Because of some compelling situation, the petitioner had to submit a letter of resignation addressed to the Commandant, 68 Bn, CRPF on

06.08.2018 and the same was forwarded through the Officer Commanding, B/68 Bn, CRPF. On receipt of the said application, the same was

forwarded by the Officer Commanding, B/68 Bn, CRPF to the Commandant, 68 Bn, CRPF on 06.08.2018 itself. In the said application, the petitioner

stated that due to some domestic problems he had been facing, he was tendering resignation voluntarily from service so as to sort out the domestic

problems. The resignation tendered by the petitioner was accepted by the Commandant, 68 Bn, CRPF immediately on the same day, 06.08.2018 and

immediately on the next day, an office order dated 07.08.2018 was passed to that effect.

2.2. The petitioner after submitting resignation, realized that instead of resolution of the problems, the situation became more complicated in the

domestic front and he and his family members had to face financial constraints. Showing his willingness to join the Force again, the petitioner

submitted an application before the Director General of Police, CRPF on 07.09.2018. On receipt of the application of the petitioner dated 07.09.2018

seeking his re-instatement, the office of the Inspector General of Police, North West Sector, CRPF forwarded the same to the Commandant, 68 Bn,

CRPF vide his letter dated 07.09.2018 with the request to examine the matter in terms of Rule 26(4) of the Central Civil Services (Pension) Rules,

1972 [the CCS (Pension) Rules, 1972, for short] and to take a decision as the Commandant, 68 Bn, CRPF was the appointing authority for the

petitioner, Ex-HC/GD.

2.3. The Commandant, 68 Bn, CRPF thereafter, stated to have considered the matter of re-instatement of the petitioner and by his order dated

26.09.2018, the prayer for re-instatement of the petitioner into his earlier post of HC/GD was rejected. On being aggrieved by the said two orders of

the Commandant, 68 Bn, CRPF, the petitioner submitted a representation before the Director General, CRPF on 25.10.2018 praying for re-

consideration of the matter of his re-instatement. The decision about not re-instating the petitioner in the post of HC/GD was further reiterated by

another communication dated 17.12.2018. Thereafter, the petitioner has approached this Court by way of this writ petition seeking the reliefs, as

mentioned hereinabove.

3. I have heard Mr. N. Barman, learned counsel for the petitioner and Mr. R.K. Deb Choudhury, learned Assistant Solicitor General of India (ASGI)

for all the respondents.

4. It is submitted by Mr. Barman, learned counsel for the petitioner that the petitioner was facing some domestic problems since a long time and the

situation got aggravated during the month of August, 2018. During the said period, he had also faced some unwanted situation in his battalion. The

Company Commandant getting annoyed with the petitioner on some issues, asked him to write resignation and to give his domestic problem as the

reason behind such resignation. Finding the situation difficult to cope up and not seeing any immediate solution to his problems, the petitioner on the

spur of the moment, had decided to submit an application on 06.08.2018 seeking his release from service. The petitioner was under the belief that if he

would submit his release from service and attend to the domestic problems immediately, the situation faced by him would be resolved.

4.1. When after being discharged from service, the petitioner tried to resolve the domestic problems he was facing but as it became more complicated

instead of any resolution and the family of the petitioner started facing severe financial constraints, he decided to approach the respondent authorities

with the prayer for his re-instatement in service. The petitioner had submitted the application for his re-instatement immediately on 07.09.2018.

4.2. Learned counsel for the petitioner has submitted that the letter of resignation was not written in his handwriting. The letter of resignation was in

Hindi and the petitioner was not conversant in writing a letter in Hindi. The signature of the petitioner was taken on the letter after the same was

written in somebody else's hand. It cannot, he submits, be presumed that the contents of the said letter was wholly according to the petitioner and

it is indicative of the fact that submission of resignation was not a voluntary act. He further submits that though the letter of resignation was submitted

hastily on his behalf for the above situation on 06.08.2018, the respondent authorities had also discharged him from service on 07.08.2018 hastily by

completing all the formalities on 06.08.2018 and without following the procedure laid down in the Central Reserve Police Force Act, 1949 (the

CRPF Act, for short) and the Central Reserve Police Force Rules, 1955 (the

CRPF Rulesâ??, for short). He has specifically referred to the Schedule to the CRPF Act read with Section 5 and Section 6 thereof and also Rule 16 to Rule 17A of the CRPF Rules to emphasize that notwithstanding submission of any application of discharge/resignation on behalf of a member of the Force, it is incumbent on the part of the respondent higher authorities in the CRPF to follow the procedure laid down in the Schedule and no decision on discharge/resignation could have been taken prior to elapse of the mandatory period stipulated in that behalf from the date of tendering resignation.

4.3. He has further submitted that the DIG, CRPF by his communication dated 07.09.2018 had directed the appointing authority i.e. the Commandant, 68 Bn, CRPF to consider the application of the petitioner for re-instatement in terms of Rule 26(4) of the CCS (Pension) Rules, 1972 but the appointing authority failed to consider the same in the proper perspective. He further submits that it is evident from the order dated 26.09.2018 that the appointing authority had rejected the same by not taking into account relevant considerations. Some new immaterial issues were raised by the appointing authority to reject the application but the same were not in existence when the letter of resignation was considered by the same authority on 06.08.2018/07.08.2018.

4.4. Lastly, to buttress the submissions, he has relied upon the decisions of this Court in Gyani Singh vs. Union of India, reported in 2013 (1) GLT 306, and in Biswarup Mukherjee vs. Union of India, reported in 2017 (3) GLT 251.

5. Per contra, Mr. Deb Choudhury, ASGI has submitted that the petitioner had taken inconsistent stands at different points of time. On one hand, it is pleaded by him that an untoward incident which occurred on 05.08.2018, had compelled him to write the resignation letter on the advice of his higher authorities. He, at the same time, in his letter of resignation dated 06.08.2018, had mentioned that the domestic problems was the root cause for submitting his letter of resignation.

5.1. It is further submitted by him that on receipt of the letter of resignation on 06.08.2018, the petitioner was personally explained about the consequences he would face after his resignation but as the petitioner stood firm on his decision to resign, the application had to be forwarded along with a vigilance certificate and an undertaking certificate to the appointing

authority for doing the needful. The petitioner was also heard by the appointing authority before accepting the letter of resignation and the petitioner was explained about the loss he would be visited with in the event of his resignation.

5.2. It is further submitted by him that the respondent authorities had followed the procedure laid down in the office order dated 07.03.2017 in

accepting the letter of resignation of the petitioner. When the application of the petitioner seeking his re-instatement was forwarded to the appointing

authority the same was considered in the manner as was asked for and it was found that the matter of re-instatement of the petitioner into service not

merited and accordingly, the decision was conveyed by the order dated 26.09.2018.

6. I have considered the submissions of the learned counsel for the parties and also perused the materials on record brought by the parties through

their pleadings. I have also considered the decisions relied on behalf of the petitioner.

7. A perusal of the letter of resignation dated 06.08.2018 shows that the letter was written in Hindi and the petitioner signed the same in English. It

was stated therein that the petitioner due to his domestic problems, wanted to proceed on voluntary resignation from service so that the domestic

problems could be solved. It was prayed that his request for voluntary resignation from service be accepted with immediate effect so that he could

solve his own problems. The said letter of resignation was forwarded by the Officer Commanding, B/68 Bn, CRPF to the Commandant, 68 Bn, CRPF

on 06.08.2018 itself along with a vigilance certificate in English and an undertaking certificate in Hindi for further necessary action at the end of the

Commandant, 68 Bn, CRPF, with the endorsement to accept the petitioner's request for discharge from service. In the vigilance certificate dated

06.08.2018, the Officer Commanding, B/68 Bn, CRPF had certified that the petitioner who was considered for discharge from service with immediate

effect, was free from vigilance angle and no DE/PE was pending or was being contemplated against him. It was further certified that the

petitioner's integrity was beyond doubt. In the undertaking certificate written in Hindi, it was stated that the petitioner after proceeding on

voluntary resignation from service would not claim to rejoin the force. In the

extract copy of personal interview/audience register dated 06.08.2018, it was recorded that the petitioner was heard in person and he requested for discharge from service. The petitioner was stated to have been briefed regarding financial hardship he was likely to face in future but the petitioner was found insisting for his early release. Citing such grounds, it was mentioned that the petitioner's request for discharge was accepted and a decision was taken to pass order to discharge him with effect from 07.08.2018.

8. Accordingly, the office order came to be passed by the Commandant, 68 Bn, CRPF on 7. 08.2018 which is reproduced hereunder :

OFFICE OF THE COMMANDANT-68 BN, CRPF, VEENER MILLS PVT. LTD.

MANKHOOLI, TINSUKIA, ASSAM

No. D.V. I/2018-68-EC-1 Dated, the August, 2018

OFFICE ORDER

Under the provisions contained in Rule 17 and 7 (b) of CRPF Rules, 1955 read with Directorate General, CRPF, New Delhi letter No. M.V. 03/82

Legal Misc dated 29.04.82 and G.O.I. MHA U.O. No. 5026/19/2001-pers-I dated 07.09.2001, application for resignation from service dated

06.08.2018 tendered by No. 001391094 HC/Gd HITESH TALUKDAR of 68 Bn is hereby accepted with effect from 07.08.2018 (AN). Accordingly,

he is struck off from the strength of this Unit with effect from the same date i.e. 07.08.2018 (AN).

Sd/- Surinder Kumar

COMMANDANT " 68 BN CRPF

07.08.2018

No. D.V. I/2018 -68-EC-1 Dated, the August, 2018 Copy forwarded to :-

1. The Dy. Inspector General of Police, CRPF, HQ Range, Chandigarh for information and necessary action please.
2. The Dy. Inspector General of Police, GC, CRPF, Jalandhar in duplicate for information and necessary action please.

Sd/- Surinder Kumar

COMMANDANT " 68 BN CRPF

07.08.2018

9. The petitioner had thereafter, submitted an application to the Directorate General of Police, CRPF at Chandigarh on 07.09.2018 praying for his re-instatement in the Force after being discharged. In the said application, the petitioner had stated that as he was facing some domestic problems from a long time, he was mentally disturbed and unable to give concentration in his duties and unable to take any right decision at that time, he tendered his resignation under pressure which was accepted on 07.08.2018. After having discharged from service, the petitioner had found that the problems had become more complicated and the financial condition of the family had deteriorated severely. As a result of being discharged, his wife and children had to face severe financial constraints and the family had reached the stage of hunger. As it was not possible for him to tolerate anymore he having no other earning source, would like to join the Force again to serve and to look after his family. On receipt of the said application for re-instatement, the same was forwarded to the Commandant, 68 Bn, CRPF by the Headquarter with the request to examine the matter in terms of Rule 26(4) of the CCS (Pension) Rules, 1972 and to take a decision at his end as the appointing authority. On receipt of the said application for re-instatement dated 07.09.2018, the Commandant, 68 Bn, CRPF as the appointing authority had intimated the petitioner vide his order dated 26.09.2018 that his prayer for re-instatement had been rejected.

10. The respondents have, in their affidavit, referred to an order dated 07.03.2017 of the Director General, CRPF with regard to acceptance and withdrawal of discharge/resignation from service and the voluntary retirement of Force personnel whereby the Director General had intimated about the procedure to be followed in connection with applications received from the Force personnel for acceptance and withdrawal of discharge/resignation from service, after noticing numerous instances of such requests from Force personnel for their re-instatement into service after discharge/resignation from service. Since a person who tenders application for discharge/resignation loses all his consequential benefits like pension, medical facilities, gratuity, leave encashment, etc., it has been emphasized therein that the authority competent to accept the resignation should personally explain the growing unemployment problems and the consequences of discharge to the persons seeking discharge from service. It has been

pointed out that while it is not in the interests of the Government to retain an unwilling Government servant in service, but a care has to be taken that

no one is allowed to proceed on discharge without any compelling reasons. As a model employer, the administration must conduct itself with high

probity and candour with its employees and should always be graceful enough to respond to their problems. It is further indicated therein that prior to

accepting discharge/resignation, the accepting authority should obtain an undertaking to the effect that he has been explained in detail about the likely

financial hardship he may face in this uncertain and difficult economic age after his discharge/resignation. The concerned commandants have been

directed thereby to explain to the individuals about consequences of discharge/resignation/voluntary retirement. A reference has also been made to the

provisions in Rule 26 of the CCS (Pension) Rules, 1972.

11. The events leading to the acceptance and rejection for the request for re-instatement and the procedure adopted by the respondent have been

stated in the affidavit. As per the respondents, when the petitioner by his application dated 06.08.2018 intended to resign voluntarily from service due

to domestic problems, the petitioner was personally explained by the Company Commandant about the financial hardship the petitioner might face

after his resignation, but the petitioner was found to have made up his mind and the Company Commandant forwarded the application along with the

vigilance certificate and the undertaking certificate to the Commandant, 68 Bn, CRPF for his needful action. Thereafter, the petitioner was called for

personal interview/audience register on 06.08.2018. On his appearance before the Commandant, 68 Bn, CRPF, the petitioner was asked about the

reasons behind his resignation from service particularly when he had served the nation for nearly 18 years and would be entitled for pensionary

benefits after completion of 20 years of service. It was told by the petitioner that his domestic problems could only be solved when he remained

physically present with the family and requested for immediate acceptance of his resignation. The petitioner was thereafter explained about the

growing unemployment problem and the likely financial hardship after his resignation but the petitioner was found to have made out his mind for

resignation. Since it was not in the interests of the employer to retain an unwilling employee in service, the resignation of the petitioner was accepted



by the Commandant, 68 Bn, CRPF w.e.f. 07.08.2018.

12. The petitioner was found to have returned at the Headquarter, CRPF, NW Sector to submit a representation dated 07.09.2018 praying for re-

instatement in service. On receipt of the said request, the I.G., CRPF, NW Sector by a letter dated 07.09.2018 requested the Commandant, 68 Bn,

CRPF to examine the request of the petitioner in terms of Rule 26(4) of the CCS (Pension) Rules, 1972 and to take a decision at his end as the

appointing authority. Thereafter, the representation of the petitioner for his re-instatement was examined by the appointing authority in terms of the

existing rules, behaviour report received from the Officer Commanding, B/68 Bn and other service conditions. Finding no merit in the petitioner's

representation in the light of principles envisaged in Rule 26(4) of the CCS (Pension) Rules, 1972, the appointing authority rejected the said

representation finding it devoid of merit and the decision so taken was communicated vide a letter dated 26.09.2018. The decision was again

communicated to the petitioner by the DIG, CRPF by his letter dated 17.12.2018.

13. The provisions of Section 5, Section 6 and the Schedule to the CRPF Act, 1949 and also Rule 16 and Rule 17 of the CRPF Rules, 1955 have been

referred to buttress the contentions on behalf of the petitioner that the three months notice is mandatory for discharge of a member of the Force from

the service, like the petitioner, who was serving on substantive basis in the post of Head Constable/GD at the relevant time, and such acceptance of

discharge/resignation within one day was in breach of the procedure prescribed by the CRPF Act and CRPF Rules.

14. For ready reference, Section 5, Section 6 and Schedule to the CRPF Act are quoted hereunder :-

Section 5. Enrolment. - Before a person is appointed to be a member of the force, the statement contained in the recruiting roll set out in the

Schedule shall be read out and, if necessary, explained to him in the presence of an officer appointed under sub-section (1) of section 4, and shall be

signed by such person in acknowledgement of its having been so read out to him :

Provided that any person who has for a period of six months served with the Force, shall, on appointment to the Force thereafter, be deemed to be a

member of the Force notwithstanding that provisions of this section have not

been complied with in his case.

Section 6. Resignation and withdrawal from the Force. - 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 his service; or

(b) withdraw himself from all or any of the duties of his appointment, without the previous permission in writing of the Commandant or Assistant

Commandant or any other officer authorized by the Commandant to grant such permission.

THE SCHEDULE - Recruiting Roll -

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 afterwards until the completion of the period prescribed as aforesaid; the Commandant may either accept your resignation

forthwith or at the end of three months from the date of its receipt :

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.

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Signature of the member of the Force in acknowledgement of the above having been read out to him.

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Signature for impression of the member's left thumb to be taken in the presence of the enrolling officer.

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Signed in my presence after I had ascertained that the candidate understood the purport of what he signed.  
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Commandant or otherwise authorised enrolling officer.

Place :

Date :

14.1. Rule 16, Rule 17 and the Rule 17A of the CRPF Rules, 1955 are quoted hereunder :

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 month's 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 under section 4 and 5 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.

(e) 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.

17A. Recoveries on Resignation and discharge:— A member of the Force seeking resignation under rule 16 or discharge under rule 17 from service

shall be required to refund to the Government a sum equal to three months pay and allowances received by him or her prior to the resignation or

discharge, as the case may be, or the cost of training imparted to him or her in the Force, whichever is higher:

Provided that in the case of a member of the Force seeking discharge from service under rule 17 within the period of three months from the date of

enrolment, the sum equal to three months pay and allowances shall be calculated with reference to three months pay and allowances which would

have been received but for discharge:

Provided further that a member of the Force tendering resignation or seeking discharge from service for accepting a job under the Central or State

Governments or local bodies, after having been granted cadre clearance for the same, shall not be required to refund the sum as provided

hereinabove.—

15. The Schedule to the Act has prescribed that a member of the Force may, at

any time when he is not on active duty, apply for discharge, through the Officer to whom he is subordinate and he would be granted discharge after 2 (two) months, from the date of his application, unless his discharge would cause the vacancies in the Force to exceed one-tenth of the sanctioned strength in which case he shall be bound to remain until the objection is waived or removed. But when the member of the Force is on active duty, he will have no claim to a discharge and he shall be bound to remain to do his duty until the necessity for retaining him in the Force ceases when he can make his application in the manner mentioned therein. The Schedule to the CRPF Act clearly indicates that the application for discharge is not to be accepted mechanically merely on the ground that a member has voluntarily applied for discharge. The provisions in the Schedule has made it clear that normally a member will not be discharged before two months of the application and secondly, such application for discharge after two months also cannot be allowed if it would cause vacancy in the Force to exceed one-tenth of the sanctioned strength. Till such situation is removed or waived, any such application for discharge cannot be entertained. The provision further indicates that if one is on active duty, a member cannot be discharged till the authorities decided on the necessity for retaining of the member in the Force. The provisions in the CRPF Act and the CRPF Rules go to indicate that an application for resignation/discharge is not to be disposed of hastily. Due care and attention has to be given by taking into consideration the interest of the member of the Force and also the interests of the Force.

16. Under Rule 16(a) of the CRPF Rules, discharge in case of quasi permanent member of the Force is permitted on three monthsâ?? notice. Rule

17 has laid down that a member of the Force shall at any time before he has completed three monthsâ?? service or after the completion of the full period of service for which he is engaged, entitled to claim his discharge from the Force by applying to the appointing authority through proper channel but the same is subject to the provisions of the Schedule appended to the Act.

17. The above provisions of the CRPF Act came up for consideration before this Court in Gyani Singh (supra) as well as in Biswarup Mukherjee (supra). In Gyani Singh (supra), it has been observed as under :

â??(19) The above provisions, therefore, make it abundantly clear that whenever a member makes an application for discharge, the authorities would

not grant discharge before two months and that too, without examining whether such a discharge would lead to more vacancies than 1/10th of the

sanctioned strength and when on active duty, whether his necessity is required or not. In other words, there has to be a conscious application of mind

on the aforesaid consideration regarding the strength of the Force before the authorities decide on any application for discharge.

The aforesaid provisions have been made in the larger interest of the Force so that any such application for discharge does not disturb the optimal

level of functioning of the Force which are enjoined upon to discharge various duties of sensitive nature as well as maintaining law and order through

out the country.

(20) Apart from considering the interest of the Force as stated above, the authorities also have to consider the interest of the member concerned.

This is clearly evident from the guidelines/instructions/circular/letter dated 17.5.1990 issued by the Director General of CRPF enjoining upon all the

competent authorities/ appointing authorities to counsel such members who seek discharge/ resignation from the force of the peril of unemployment

and the consequential hardships one may face after leaving the service. The authorities are directed to advice and counsel such members from taking

such an extreme steps of leaving the service. Therefore, to ensure that such advice and counseling takes place genuinely and not to reduce it to a

mere formality, it was required that the authorities concerned take an undertaking in writing from the concerned member of having been explained of

such eventualities and keep such an undertaking on record.

It may not be far fetched to assume that the aforesaid guidelines/ instructions/ circular/ letter was issued not only in the interest of the individual but

also in the larger interest of the society.

It may, perhaps, be seen from this aspect also that when a person trained in arms, after leaving the service gets confronted with the spectre of

unemployment and other hardships, may prove to be a serious danger to the society. Therefore, insistence on adhering to the instruction as laid down

in 17.5.1990 cannot be lightly brushed aside as it serves as a preventive measure against any possible harm to the individual as well as to the larger

interest of the society.

(21) Therefore, any application for discharge has to be dealt with by the

authorities concerned, from two perspectives; one from the perspective of the individual and another from the perspective of the Force and the society at large.â??

18. Thus, in *Gyani Singh (Supra)*, it has been held that the provisions of the Schedule has made it abundantly clear that whenever a member makes an application for discharge the authorities would not grant discharge before two months without examining the other factors. There has to be a conscious application of mind of all the relevant aspects including the strength of the Force before the authorities decide on the application for discharge. Since the provisions have been made in the larger interest of the Force so that any such application for discharge does not disturb the optimal level of functioning of the Force which are enjoined upon to discharge various duties of sensitive nature as well as maintaining law and order throughout the country. Apart from considering the interest of the Force the authorities should also consider the interest of the member of the Force concerned while considering the application for discharge.

19. The above observations made in *Gyani Singh (supra)* are also reiterated in *Biswarup Mukherjee (supra)*. In *Biswarup Mukherjee (supra)*, a member of the Force was discharged w.e.f. 26.07.2011 on the basis of purported resignation tendered by him on 25.07.2011. The order was challenged inter-alia on a ground that it was not a case of voluntary resignation but was forced upon the member of the Force by the Commandant after he was punished with quarter guard and beaten mercilessly. In the said context, the Court held, by referring to the Schedule to the Act and other provisions, that the required notice period of three months was disregarded and discharge was ordered forthwith. Therefore, the mandatory counseling was highly unlikely. Even if the resignation was assumed to be voluntary, the accepting authority was duty bound to abide by the notice period, mandated by the Schedule of the Act and also to apply his mind on the necessity for detention of the constable in the larger interest of the organization. Having found the discharge order issued forthwith on the immediate next date of submission of resignation, it was held that norms were disregarded by the hasty action of the accepting authority and the petitioner therein was directed to be reinstated.

20. The order of the Director General, CRPF dated 07.03.2017 has also

emphasized that the authority competent to accept the resignation should personally explain the consequences of discharge to the persons seeking discharge from service. All due care has to be taken by the appointing authority that no one is allowed to proceed on discharge without any compelling reasons. As a model employer, the appointing authority must conduct itself with high probity and candour with its employees and should always be graceful enough to respond to their problems. From the said order, it is clear that a duty was enjoined upon the Commandant, in case of non-Gazetted Officer, to explain about the consequences of discharge and the accepting authority for resignation/discharge must obtain an undertaking from the individual officers to the effect that he has been explained in detail.

A copy of such undertaking has been directed to be kept on record.

21. Reverting back to the factual background of the case in hand, it is found that an undertaking certificate was obtained from the petitioner on

06.08.2018 wherein the petitioner was found to have certified that after he proceeded on voluntary resignation from service he would not claim for

rejoining the Force and his request for discharge be accepted. The undertaking certified was in the following terms :-

#### UNDERTAKING CERTIFICATE

I, Force No. 001391094 HC/GD Hitesh Talukdar, B/68 Bn, certified that after my proceeding on voluntary registration from service, I will not claim to

re-join the force.

Therefore, Kindly accept my request for discharge from service.

Applicant

Sd/-06/08/2018

Force No. 001391094

HC/GD Hitesh Talukdar

B/68 Bn, CRPF,

Tinsukia, Assam

The undertaking so obtained from the petitioner was apparently not in terms of the guidelines formulated by the Director General, CRPF on

07.03.2017. There is no reflection in the undertaking that the petitioner was explained in detail about the consequences likely to ensue from his sudden



decision of resignation and it was not obtained by the appointing authority, but by an authority subordinate to the appointing authority prior to sending

the matter to the appointing authority. Though it has been asserted that the petitioner was explained about the consequences of discharge there was no

reflection of the same in the undertaking except the attestation of the Officer Commanding, 68 Bn, CRPF in the undertaking certificate.

22. In the abstract copy of the personal interview/audience register dated 06.08.2018, it was mentioned that the petitioner was heard in person and he

was explained regarding financial hardship he was likely to face in future but in the said abstract copy of personal interview/audience register, nothing

is discernible to indicate that the petitioner had subscribed his signature in such personal interview/audience register. The decision to accept the

resignation, tendered by the petitioner on 06.08.2018, on 06.08.2018 with the issuance of the discharge order on 07.08.2018, is found to be in disregard

to the provisions contained in the CRPF Act and the CRPF Rules, more particularly, the provisions contained in the Schedule to the CRPF Act and

without giving due consideration to the compelling reasons cited by the petitioner for which he stated to have tendered resignation after 18 years of

dedicated services. The case papers made available to the Court do not indicate that due counseling was accorded to the petitioner before his

discharge and the respondent authorities were truly alive to the situation and consequences like to be faced by such a member of the Force. The

credibility of the personal interview/audience register comes under a cloud in the absence of the signature of the petitioner on it and it, thus, cannot be

assumed that the petitioner was made a part in such deliberation. It is also not reflected that the authorities had applied their minds on the

organizational need for retention of the Head Constable in the operation. An undertaking, as required under the order dated 07.03.2017, was not seen

to be obtained by the appointing authority after proper counseling. The infringement of the Guidelines as contained in the order dated 07.03.2017 for

dealing with the resignation and discharge of personnel in the CRPF organization is clearly discernible in the case.

23. When the petitioner when on 07.09.2018 submitted his application for re-instatement, the I.G., CRPF, NW Sector had forwarded the same to the

appointing authority to consider the case of re-instatement in the light of the provisions contained in Rule 26(4) of the CCS (Pension) Rules, 1972.

24. For ready reference, Rule 26(4) of the CCS (Pension) Rules, 1972 is quoted hereunder :

Rule 26. Forfeiture of service on resignation.

(4) The Appointing Authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity,

efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which

originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal

was made, the conduct of the person concerned was in no way improper;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to

resume duty as a result of permission to withdraw the resignation is not more than ninety days ; (iv) that the post, which was vacated by the

Government servant on the acceptance of his resignation or any other comparable post, is available.

25. The above Rule 26(4) indicates that the appointing authority may permit a person to withdraw his resignation in the public interest on fulfillment of

the four conditions indicated therein, firstly, the resignation was tendered by the Government servant for some compelling reasons which did not

involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material

change in the circumstances which originally compelled him to tender the resignation; secondly, in the period intervening between the date on which

the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person should not be improper;

thirdly, the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to

resume duty as a result of permission to withdraw the resignation is not more than ninety days; and lastly, the post, which was vacated by the

Government servant on the acceptance of his resignation or any other comparable post, is available.

26. From the facts appearing from the pleadings of the parties, it is already found that the resignation was stated to be tendered by the petitioner for facing domestic problems for some time and after being discharged when he tried to resolve the matter in the domestic front, he could not resolve the same and having faced severe financial stringency by him and his family members, he was compelled to change his decision and decided to pray for his re-instatement. The situation prior to tendering resignation did not make any reflection on the integrity, efficiency or conduct of the petitioner and he had given an explanation about the situation due to which he had requested for withdrawal of the resignation. The issue of material change in circumstances has to be considered in such context. It is noticed that there is no reflection in the records for the period intervening between the date on which the resignation became effective i.e. 07.08.2018 and the date on which the request for withdrawal was made, 7. 09.2018 to indicate that the conduct of the petitioner was anyway improper during such period. The petitioner had made the request for his re-instatement on 07.09.2018, meaning thereby, he had made the request within a period of ninety days. The respondents have not contended that the post which was vacated by the petitioner on the acceptance of his resignation had been filled up in the meantime.

27. The relevant aspects as provided in Rules 26(4) of the CCS (Pension) Rules, 1972, as directed by the Director General, CRPF, were not considered by the appointing authority while rejecting the application for the petitioner's re-instatement on 26.09.2018. But he had gone ahead to consider some new materials after calling for them from the petitioner's earlier place of posting. The appointing authority had ventured to insinuate the character and behaviour of the petitioner by referring to periods anterior to the date of acceptance of resignation while rejecting the prayer for re-instatement. The reasons shown in his letter dated 26.09.2018 are belied by the earlier vigilance certificate dated 06.08.2018 whereby had earlier accepted the position that the petitioner was free from vigilance angle and no DE/PE was pending or being contemplated against him at the time of consideration of his application for resignation. The said appointing authority had, in clear and unambiguous terms, accepted that the integrity of the petitioner, as on 06.08.2018, was beyond doubt. The vigilance certificate was issued based on official records. The vigilance certificate was given in

the following words :

â??VIGILANCE CERTIFICATE

It is certified that as per this S/Unit office records No. 001391094 HC/GD Hitesh Talukdar of this s/Unit who is to be considered for discharge from service with immediate effect is free from vigilance angle and no any DE/PE is pending or being contemplated against him and his integrity is beyond doubt.

Place :- Tinsukia

Date :- 06/08/18

Sd/- Illegible

06.08.2018

Officer Commmanding

B/68 Bn, CRPFâ??

28. In such view of the matter, this Court is of the considered view that while considering the petitionerâ??s application for re-instatement in the light of the directives given by the Director General, CRPF on 07.03.2017 the appointing authority ignored the relevant factors as contained in Rule 26(4) of the CCS (Pension) Rules, 1972 and as emphasised by the order dated 07.03.2017, and taken some irrelevant factors for consideration to influence his decision.

29. In the light of the above determination, the impugned discharge order dated 07.08.2018 (Annexure-1) is held to be unsustainable in law and the same is accordingly set aside. For the discussion above, the order dated 26.09.2018 whereby the request of the petitioners for his re-instatement was rejected, is also found unsustainable and consequently, the same is also set aside.

30. The respondents are directed to reinstate the petitioner in service, within eight weeks from the date of receipt of this order but the authorities are allowed to verify the medical fitness, upon reinstatement. The period from the date of discharge till reinstatement will be notionally treated to be on duty, for the purpose of other service benefits. But back-wages should not be paid for the interregnum since no service was received, during this period. It is ordered accordingly.

31. With the above direction, the writ petition is allowed in the manner indicated. There shall, however, be no order as to cost.