
(2008) 09 DEL CK 0026

In the Delhi High Court

Case No : Writ Petition (C) No. 6435 of 2008

Major Gaurav Bhandari

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Army Act, 1950 — Section 27
Constitution of India, 1950 — Article 226

Citation : (2008) 09 DEL CK 0026

Hon'ble Judges : Sanjay Kishan Kaul, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : N.L. Bareja, for the Appellant; Barkha Babbar, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The petitioner joined the Army Corps of EME as a Commissioned Officer on 12.12.1998. The petitioner after having served the respondents for a period for two and half years, reported to the CME, Pune for undergoing a degree engineering course in October, 2001. There were some interruptions in the course on account of Operation Prakaram. The petitioner completed the course in July, 2006. The petitioner while pursuing the course is stated to have got married on 22.06.2004 and claims that after marriage, he was having problems on the domestic front on account of psychological differences with his wife, but completed the course despite this fact. The petitioner, prior to completion of his course, submitted an application on 04.04.2006 seeking to resign his service. The said application is stated to have been recommended by the appropriate authorities, but the Chief of Army Staff rejected the request vide order dated 18.09.2006. It is the plea of the petitioner that such a rejection was without appreciating the scope and ambit of the revised policy dated 22.11.2001 of the respondents for premature retirement/resignation.

2. The petitioner aggrieved by the said decision, submitted a statutory complaint to the Union of India, but the same was also rejected by the letter dated 28.11.2007. The ground for such rejection was that the petitioner belonged to

the technical arm and there was acute shortage of officers in the said department and thus the resignation of the petitioner could not be accepted at that juncture.

3. The petitioner made a renewed request vide application dated 06.05.2008 seeking to quit the Army by resigning his commission unconditionally without even terminal benefits. The petitioner filed WP(C)4141/2008 before this Court during the pendency of the application and this Court by an order dated 28.05.2008 directed that the petitioner's application should be disposed of within two months giving him liberty to challenge any adverse decision. The application of the petitioner has been thereafter rejected vide letter dated 25.07.2008. It is this decision which the petitioner now seeks to challenge.

4. The petitioner's case is that his wife is not happy with his service with the respondents and despite four years of marriage, there is no offspring. In fact, the plea of the petitioner is that his wife does not want to go in for a family till the petitioner is serving the respondents. Insofar as this aspect is concerned, we may observe that the Army can hardly be blamed for the wife of the petitioner refusing to go in for a family till he is with the Army. The connected plea raised is that the petitioner has to look after his aged parents who are suffering from depression. Interestingly, it is pointed out by the respondents, which is not disputed by the learned Counsel for the petitioner, that the father of the petitioner is still in service with the Government of Madhya Pradesh in the Forest Department. The father of the petitioner has not put in his papers. It is the duty of the father of the petitioner to look after the mother of the petitioner and the parents of the petitioner can hardly be said to be aged where the father of the petitioner is still in service; more so, in this day and age. The petitioner also claims that his sister is having matrimonial problems, who is based in the USA.

5. We may notice that a number of petitions are coming up where service personnel are seeking discharge from service or seeking to resign and the Army is unable to accept such cases because of shortage of requisite qualified personnel. We find that suddenly people are wanting to look after their parents or are developing family problems. Alternative opportunities available in the country now seem to be encouraging this trend. The problem, however, remains that the respondents cannot discharge them for the reason of inadequate alternative personnel of requisite qualifications. It cannot be lost sight of that the Army service has a special position in the country since it looks after the integrity and security of the country and that is why it has been repeatedly observed in respect of various aspects of service jurisprudence that it stands on a separate footing. Even in matters of discipline of Army service, the norms of the service jurisprudence relating to civil service is not applicable. In order to make the Army service lucrative, steps are being taken by the Central Government to remedy the grievance of the service personnel of the Army service. A decision whether the respondents are able to release a person or not has to be taken by the respondents. This Court does not sit as a court of appeal and all that has to

be seen by this Court is whether the decision is as per the norms. The grounds given in the earlier rejection and the subsequent rejection, in our considered view, are not different. The mere fact that the petitioner keeps on renewing the request at short intervals would make no difference. We are, however, conscious of the fact that a situation should not arise where such a request is postponed for an indefinite period of time.

6. It is in the aforesaid context that the learned Counsel for the petitioner has made a reference to a Division Bench judgment of this Court in *Rahul Shukla Vs. Union of India and Others*, where the relevant regulations for the Army " Volume I " have been considered in para 8 of the judgment, which reads as under:

104(d) An officer will not be relieved of his duties until receipt of intimation that his application to retire or resign has been accepted. An officer whose application to retire or resign has been accepted may apply to the Central Government for his application to be cancelled. In the case of the officers who have once proceeded on leave pending retirement, permission to withdraw such applications will only be granted in exceptional circumstances. The decision of the Central Government on all applications to retire will be final.

105(a) Application for resignation/retirement.

(a) Application of officers of the Army to resign their commission or to retire from the service will be forwarded through the prescribed channels to Army HQ. The applicant need not give a prospective date from which it is desired that the retirement/resignation should take effect as it may not be administratively convenient for the competent authority to take a decision by a desired date. However, if an applicant desires to retire from a specified date for any valid reasons, such as commutation of pension or higher rate of pension, he may indicate a prospective date in his application and submit his application not less than 4 months before that date. In the case of the retirement with requisite qualifying service for pension, the applicant will also state where he wishes to draw his pension.

(f) The applications for premature retirement/resignation will be examined by the Army HQ and submitted for consideration and approval of the COAS, who may reject an application which is not based on adequate and justifiable reasons at his level without reference to the government or recommend for acceptance by the Central Government. In case, the officer feels aggrieved by the decision of the COAS, he can, if he so chooses, file a statutory complaint addressed to the Central Government under the provisions of Section 27 of the Army Act. The decision of the Central Government on application to retire premature/resign will be final.

(g) Where the Central Government are satisfied that the officer's continuance in service for a specified period is necessary to meet exigencies of service and alternative arrangements cannot be made, they may order holding the retirement/resignation order in abeyance.

7. The Division Bench has noticed that there is substance in the plea of the respondents that the service jurisprudence applicable to civil services cannot ipso facto be extended and applied to defence services which are a class by themselves. Simultaneously, it has been observed that a reading of the provisions shows that while an application seeking voluntary retirement is fettered by several riders and discretion lies with the competent authority to accept or not accept the prayer; a prayer for resignation has to be dealt with on different footing as the discretionary power vested in the authorities taking decision on application for resignation is limited and circumscribed. An application for resignation may be rejected if it is not based on adequate and justifiable reasons. The application can also be kept in abeyance. In the present case, the request of the petitioner would have to be examined within the parameters of Clauses (f) and (g) referred to aforesaid. Thus the grounds given by the petitioner for quitting the Army by resigning his commission as also the exigency of service by reason of there being a larger attrition rate can be taken into consideration by the respondents while rejecting the request of the petitioner.

8. Learned Counsel for the petitioner sought to contend that the resignation has to be ultimately accepted or rejected by the Central Government, but a reading of the impugned decision shows that it has been taken by the competent authority.

9. The last aspect urged by learned Counsel for the petitioner is about the plea of discrimination. It is the case of the petitioner that while other people are being permitted to be discharged from Army service, the petitioner is being singled out. The illustrations of such cases of discrimination are set out in the present writ petition at page 16 and the same is re-produced below:

S. No. Particulars Month/Year Proceeded on retirement

(a) IC-56955 Major G.S. Gill July, 2007

(b) IC-57425X Major S. Thomas August, 2007

(c) IC-53372 N Major A. Srikanth September, 2007

(d) IC-53767 Major Avi Chandra Sud February, 2008

10. Learned Counsel for the respondents, on instructions, has explained the peculiar facts which justify the premature retirement/resignation of the aforesaid four officers. The officers at Serial Nos. (c) and (d) are in permanent low medical category and the officer at Serial No. (d) also has family problems. The factum of officers at Serial Nos. (c) and (d) being in permanent low medical category itself makes them a class apart.

11. The wife of the officer at Serial No. (a) is stated to be a psychiatric patient, who is not improving after the treatment and the problem got aggravated on account of her suffering from TB. There were also no issues from the marriage.

12. The officer at Serial No. (b) was facing divorce proceedings and had ailing

parents.

13. It must be understood that the plea of discrimination is not absolute in itself. The premise is that similarly situated persons should not be treated differently. However, it is not required that differently situated persons must be treated similarly. The facts in the case of the petitioner show that the petitioner seems to be desirous of leaving the Army service and for that, grounds are being created. The respondents at present need the services of the petitioner and find themselves unable to accede to the request of the petitioner. In case, in the future, the respondents are able to make adequate arrangements or any further circumstances arise which may enable consideration of the request of the petitioner, the observations made herein would not preclude such consideration by the respondents.

13. We see no reason to interfere under Article 226 of the Constitution of India.

14. Dismissed.

CM 12302/2008

No further directions are called for on this application.

The application stands disposed of.