
(2006) 08 DEL CK 0197

In the Delhi High Court

Case No : Writ Petition (C) No. 10279 of 2006

Major Sunil Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Army Rules, 1954 — Rule 105

Defense Services Regulation, 1962 — Regulation 104, 105

Citation : (2006) 08 DEL CK 0197

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : Maj. K. Ramesh, for the Appellant; Rekha Palli, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The request of the petitioner for resignation of Permanent Commission was declined by the Army Headquarters vide their Order dated 25th January, 2006 against which the petitioner had preferred a statutory complaint on 10th March, 2006 before Central Government which was also rejected by Order dated 19th May, 2006. The operative part of the said Order reads as under:

The Statutory complaint of the officer has been examined in detail along with all relevant documents, rules and comments of various authorities. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that the officer's resignation cannot be accepted having no merit, since the officer has failed to submit documents to conclusively prove the dependency and acute medical problems of his parents or sister. The officer has not sought a posting on compassionate grounds where it would be possible to get his contentions vetted by medical authorities. The officer cannot be granted release since he is under obligation to serve in Army till 16 June 2009 having done and obtained a prestigious M.Tech qualification at Government cost and also because there is acute shortage in EME with such specialist qualifications which he has obtained by virtue of service in Army and which are

most critically and essentially required by the organization.

The Central Government, Therefore, rejects the Statutory complaint dated 10.03.2006 submitted by IC-54284H Major Sunil Kumar V, EME, against rejection of application for resignation from commission.

By order and in the name of the President.

(SD Banga)

2. The petitioner challenges the legality and correctness of the above Order inter alias on the grounds that the Order is arbitrary and does not take into consideration the family circumstances of the petitioner. The rejection of the request of the petitioner for resignation from Permanent Commission is in violation of the rules and vests the petitioner with serious consequences. To resign from service is a right of the petitioner and the respondents cannot arbitrarily reject the same without assigning any reasons. In support of his contention the petitioner relies upon Regulation 105 of defense Service Regulations and judgment of this Court in the case of K.S. Bhimal v. Union of India 1999 (4) SLR 630.

3. Before we proceed to discuss the merits of this contention, the reference to basic facts would be necessary. The petitioner was commissioned as an Officer in the Indian Army on 9th December, 1995 and was promoted to the rank of Major on 24th June, 2004 in which rank the petitioner is expected to retire on 31st March, 2026.

4. The petitioner made a request to the respondents, as already noticed, for resignation from Permanent Commission primarily on the reason that he is to look after his unmarried sister who is 33 years old and is a case of schizophrenia. No disciplinary case was pending against the petitioner. Though a number of Officers had sought premature retirements with full benefits but not only did the petitioner not opt for this course of action but also declined to take foreign course to which he was selected, primarily with the intention to submit his request for resignation from Permanent Commission.

5. According to the petitioner, merely because he has signed a contract, the contract of employment cannot be termed as a "Bond" and he cannot be deprived of his right to resign from service.

6. The petitioner submitted his application on 01 November 2004 giving various reasons. The petitioner had undergone a training and had signed the Bond in favor of the Government of India and he was even willing to pay the amount spent on his training which, according to the petitioner, was assessed at Rs.1,69,445. Despite this, his request for resignation was declined by the authorities on 25 January, 2006. The petitioner Therefore filed the Civil Writ Petition bearing No. 2427/2006 raising a grievance of non-acceptance of his request. The Writ petition was disposed of by the High Court of Delhi vide its Order dated 21st February, 2006, wherein the petitioner was granted liberty to

file a statutory complaint. The petitioner filed the statutory complaint in furtherance of the Order on 10th March, 2006, which, as already noticed, was dismissed by Ministry of defense vide Order dated 19th May, 2006 giving rise to this petition.

7. Upon notice, the respondents have filed a counter affidavit in which they have taken the stand that the petitioner first applied for his resignation on 16th February, 2005, wherein he had stated that he wishes to resign because he wants to provide quality time to take care of his old parents. The ground of the unmarried schizophrenic sister was not mentioned in that application. The younger brother of the petitioner is staying with the parents, and the respondents pray that the petition has rightly been rejected as he has been giving different reasons at different stages. The application was rejected in accordance with the policy as "No Demand Certificate" from CDA(O) was not enclosed with the application.

8. Later on, the petitioner again submitted another application which, according to the respondent was again rejected for the reasons stated in the impugned Order. According to the respondents, they have mainly taken the following grounds for rejecting the request of the petitioner:

On the other hand, the petitioner has submitted a fresh application dated 5th September, 2005 in which he has now brought out a new fact about his unmarried schizophrenic sister. The petitioner has also brought out that his younger brother (who was staying with his grand parents and was unable to look after the ailing parents) is now occupied with looking after the ancestral property after the demise of his grandfather in August 2005. The petitioner has been changing his stance in his applications as an afterthought. The petitioner's application dated 5th September 2005 was considered on its merits and was rejected by the competent authority. The same was rejected on the following grounds:

(a) Acute cadre deficiency in Corps of EME.

(b) Petitioner has qualified on Post-Graduate Course in Laser and Electro-Optics in June, 2004 with service liability till June, 2009.

The contention of the petitioner is that he is willing to refund the cost of the training for the unserved period of service liability. However, it does not guarantee the approval of his request for resignation. As per the guidelines on the subject issued by the Central Government, "requests for premature retirement/resignation will be considered on individual merits, keeping in view the manpower situation and the operational requirements of the service.

9. It is further the case of the respondents that the Order is neither arbitrary nor discriminatory. In fact, the petitioner was deputed to do the course M.Tech specialization in Laser and Electro Optics at the Government cost and he had filled in a Bond to serve the Army. The petitioner cannot be permitted to take

advantage as he has done the courses at the cost of the Government.

10. Regulation 104 vests the President with a power to call upon any officer to retire or resign his commission at any time without assigning any reason and similar power is also vested in the Central Government under the said regulation. Rule 105 deals with the application of an officer who wishes to resign from his commission or to retire from the service. The said application has to be moved and would be forwarded through the prescribed channel to Army Headquarters for consideration. Under Clause (e) of the said regulation, there is an obligation upon the officer who intends to resign to consider all pros and cons of his request in order to avoid administrative difficulties at the subsequent stage. Under Clause (f), the Chief of Army staff has the power to reject the application which is not based on adequate and justifiable reasons without reference to the Central Government. Where the COAS recommends it to the Central Government, the Central Government may decline or grant such permission being satisfied with the officer's continuance in service for a specific period, that is necessary to meet the exigencies of service. The Government can accept the said request and pass appropriate orders for release of the applicant officer. These regulations demonstrate that there is no indefeasible right vested in an officer to resign from service. This has to be resorted to by the officer as a last measure and if essential, must contain compelling reasons which can be justified before the authorities concerned. The mere request or a request based on alternative excuses may really not satisfy the requisites of this application. Counsel for the petitioner while relying upon the Single Bench and Division Bench judgments of this Court in the cases of Lt. Col. K.S. Bhimal v. Union of India and Ors. 1999 (4) SLR 630 and Major Rahul Shukla v. Union of India and Ors. 60 (1995) DLT 118 contended that a contract of service is not a bond of slavery and a permanent employee cannot be deprived of his right to resign. Further, that exigencies of service are no ground for rejection of an application and at best the same could be kept in abeyance.

11. Request for resigning from employment is not a right which is free of restrictions. In terms of the relevant regulation a discretion is vested in the authorities to accept or reject such request but obviously for valid and good reasons which are also in conformity with the statutory provisions. The fact which cannot be disputed and in fact has not been disputed is that the petitioner was deputed in the Army quota seat in the IIT for completing M.Tech in "Laser and Electro Optics" at the Government cost. The admission to that college was given to the petitioner from the seats reserved for army officers and the petitioner could have hardly got a seat on his own in that college to do such a specialized course. Having taken the benefit of being allotted seat in a college of great repute to do his post graduation at Government expense and after filling up a bond in favor of the respondents, would by itself be a sufficient ground for the respondents not to accept the request of petitioner for resigning from permanent commission. It is specifically pleaded in the case of the respondents that there is shortage of graduate/post graduate engineers in the Core of EME

and the request of the petitioner cannot be accepted even in view of exigencies of service and in public interest. The Division Bench judgment of this Court in the case of Major Rahul Shukla (*supra*) had stated that exigencies of services is no ground for deferring the request of an officer for resignation. In fact, there can be no such absolute proposition of law that the Government is not vested with the authority of declining the request of an officer for resignation, whatever be the circumstances and in public interest. The ground stated by an applicant would be the foundation before the authorities concerned to consider such a request. In the present case, the applicant has been changing his stand from time to time. In the first application, as is stated in the counter affidavit, the ground was to look after his aged parents, while in the subsequent application ground was that he is having an unmarried Schizophrenic sister who is 33 years old who needs petitioner's care. It is not disputed even in the present writ petition, as no rejoinder was filed to the counter filed by the respondents alleging that younger brother of the petitioner has been living with his parents for all this period and is capable of taking care of the family. The sister of the petitioner, unfortunately, is not married and is a Schizophrenic patient but that is so, for a very long time and even probably prior to the petitioner joining the Army.

12. We must notice that the respondents stand before the Court has been very fair despite the above circumstances. They had given a clear offer to the petitioner to post him to a place near his hometown so that he could devote time to his parents and sister and even could get them treated better in the hospital as per Army Rules. This offer, for no reason whatsoever, was declined by the petitioner. This declining of request has some material bearing on the controversy before the Court inasmuch as the petitioner had completed his M. Tech course in June, 2004 but he joined in May, 2002. Only few months later the petitioner started making such requests for resigning from permanent commission. This itself shows that having become better qualified in a technical branch from a reputed institution at the cost of the Government and under the special quota of seats meant for Army in contravention to the terms of his bond, the petitioner wants to resign from the commission. The rejection of such request by the respondents can hardly be termed as arbitrary or discriminatory. We find that the impugned order dated 19.5.06 does not suffer from any infirmity and has been passed upon due application of mind and for goods reasons. The power of the Court in such matter, in any case, is limited one and the Court would not examine the merits of the case or otherwise as if it was an appellate administrative authority sitting over the decision of the Army Headquarters or the Ministry of defense.

13. For the reasons afore-stated and while declining to quash the order dated 19.5.06, we dismiss this writ petition but with liberty to the petitioner to approach the respondents again, if he so wishes after the expiry of the period of bond. In the facts and circumstances of the present case, parties are left to bear their own costs.