

(2020) 11 DEL CK 0057

In the Delhi High Court

Case No : Civil Writ Petition No. 8637 Of 2020, Civil Miscellaneous Application
No. 27816 Of 2020

Manish Tyagi

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 04-11-2020

Acts Referred:

Sashastra Seema Bal Act, 2007 — Rule 8(a)

Citation : (2020) 11 DEL CK 0057

Hon'ble Judges : Rajiv Sahai Endlaw, J; Asha Menon, J

Bench : Division Bench

Advocate : Manoj Kumar Gupta, Monika Arora, Gaurav Gaur

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

C.M. Appln. No.27816/2020 (for exemption from filing certified copy, dim copy, typed and legible copies of the annexures)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

W.P. (C) 8637/2020

3. The petition which has come up today for the first time impugns the order dated 20th December, 2010 of the respondents Sashastra Seema Bal

(SSB), accepting the resignation of the petitioner and seeks mandamus to the respondents SSB to reinstate the petitioner in service with all

consequential benefits.

4. The petitioner, shortly prior to filing of this petition, has also on 10th July, 2020 applied to the respondents SSB for reinstatement and which

application was rejected on account of delay vide order dated 14th October, 2020. Challenge in the petition is made to the said order also.

5. The counsel for the respondents SSB appears on advance notice and having not found any prima facie merit in the petition on doing so the same, we have heard counsel for the petitioner at length on admission.

6. It is the case of the petitioner (i) that the petitioner was enrolled as Constable (General Duty) with the respondents SSB on 15th October, 2005; (ii)

in October, 2009, the petitioner was posted at Pithoragarh in Uttarakhand where he was detailed to handle mules; (iii) that the petitioner found himself

allergic to smell of the mules and the same affected his health; (iv) the petitioner was also sent for horse familiarization training and where also he

continued to be allergic to the smell of horses; (v) that in July, 2009 and September, 2009 the petitioner was compelled to resign but resisted the said

efforts; (vi) in July, 2010 the petitioner again felt drowsiness for the same reason and was sent on casual leave from 22nd July, 2010 to 8th August,

2010; (vii) the petitioner, on account of his illness was unable to resume duty and in September, 2010, the respondents SSB sent Civil Police to

apprehend the petitioner which found the petitioner to be bed ridden; (viii) the respondents SSB constituted a Court of Enquiry and which Court of

Enquiry on 15th September, 2010 declared the petitioner a "deserter"; (ix) however the petitioner applied to rejoin and was permitted to rejoin

but was again detailed for mule duty; (x) the petitioner on 6th December, 2010 under compulsion resigned and which resignation was accepted on 20th

December, 2010; (xi) till the year 2014, the petitioner was under treatment for the allergy developed by him because of his being detailed to handle

mules; (xii) the petitioner in the year 2005 made queries under the Right to Information Act, 2015 but continued to remain depressed; (xiii) the

petitioner on 21st November, 2017 approached the Central Information Commission (CIC); (xiv) the petitioner on 10th July, 2020 applied to the

respondents SSB for reinstatement and which application has been rejected vide impugned order dated 14th October, 2020 only for the reason of

delay; and, (xv) the petition is not accompanied with a single document of the illness/depression claimed by the petitioner.

7. The counsel for the petitioner, on enquiry, states that the medical certificate has been obtained after the filing of the petition and he be granted

liberty to file the same.

8. A medical certificate obtained now after the filing of the petition belies the pleading of the petitioner having been under treatment for allergy from

the year 2010 to the year 2014 or having been under depression from the year 2015 onwards.

9. To satisfy our conscious, we have enquired from the counsel for the petitioner, whether he has any document of medical treatment between 2010

and 2020.

10. The counsel for the petitioner from his file has handed over photocopies of medical certificates dated 6th August, 2010, 6th September, 2010 and

30th October, 2010 of a private doctor at Meerut certifying that the petitioner was suffering from some disease which we are unable to decipher and

he being unable to join duties for 10 days, 1 month and for 8 weeks respectively.

11. Such medical certificates are normally issued and obtained for applying or justifying leave and do not show a course of treatment as is claimed to

have been taken. Moreover, the disease from which the petitioner was suffering was stated to be justifying absence for short duration only and not for

a period of 10 days. None of the documents handed over show the petitioner to be suffering from mental ailment and depression to the extent coming

in the way of the petitioner being unable to approach the court for 10 years.

12. It is thus quite obvious that the petitioner intentionally did not file the said documents in the court knowing that the same do not support the case of

the petitioner.

13. The counsel for the petitioner has then contended that though there are separate mule handlers in the SSB but the petitioner was illegally assigned

the said duty.

14. Even if it was so, the petitioner ought to have complained thereagainst and sought his remedies at that time and cannot make the same a ground

now.

15. The counsel for the petitioner has next drawn our attention to Rule 8(a) of the Sashastra Seema Bal Act, 2007 quoted in the petition itself to

contend that the said Act does not permit resignation.

16. The same is again a misreading of the provision all it says is that the same can be done only with the previous permission in writing and perusal of

the documents filed by the petitioner himself shows (i) the court of enquiry, who have found that the petitioner after the leave taken by him on 8th August, 2010 ended did not report for duty; (ii) that rejoining notices were sought of his home address but he did not respond to notices; (iii) that his absent period was from 8th August, 2010 to 25th September, 2020; (iv) that he has taken leave for domestic problem; (v) that he has sent rejoining notice dated 13th September, 2010; (vi) when attempts were made to contact him, his phone was switched off; (vii) that he had illegally absented without any intimation and should be punished; (viii) the Court of Enquiry on the said findings declared the petitioner as "deserter"; (ix) that the petitioner resumed duty on 19th November, 2010 after over staying 100 days w.e.f. 9th August, 2010 to 19th November, 2010; (x) the petitioner served a letter dated 6th December, 2010 of resignation for domestic reason; (xi) the said letter of resignation was put up through concerned dealing and on 7th December, 2010 his resignation was accepted by the Commandant on 8th December, 2010; (xii) an order of acceptance of resignation w.e.f. 20th December, 2010 was issued; (xiii) a Memo was served on the petitioner to deposit Rs.55,218/- towards recovery of 3 months pay and allowances; (xiv) thereafter the name of the petitioner was struck off after necessary clearance vide Office Order ending 20th December, 2010; and, (xv) the resignation letter of the petitioner is written in hand and also states domestic problems for the resignation.

17. The counsel for the petitioner has also referred to the steps being taken by the petitioner under the RTI Act to explain the delay.

18. We have however enquired from the counsel for the petitioner whether not the petitioner knew that he had resigned. The answer is in affirmative.

19. Once it was so, we do not see any reason for the petitioner to invoke the RTI Act for just like the petitioner has now filed this petition without obtaining any documents under the RTI Act, so could have filed earlier.

20. There is no merit in the petition. The petitioner has not explained the long delay of over 10 years in approaching the court or in applying the reinstatement and in fact the documents shown in the court are contrary to the pleadings of the petitioner and falsify the pleadings of the petitioner.

21. Dismissed.