

(1993) 09 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 957 of 1986

Mast Ram Bhatti	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 27-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (1994) 1 ShimLC 300

Hon'ble Judges : Lokeshwar Singh Pant, J;Devinder Gupta, J

Bench : Division Bench

Advocate : D.K. Khanna, for the Appellant; P.A. Sharma, Sr. Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Lokeshwar Singh Pant, J.—Petitioner Mast Ram, has filed the present writ petition under Article 226 of the Constitution, praying inter alia, the following reliefs:

- (a) to quash order (Annexure-PI) discharging the Petitioner from service ;
- (b) to quash the adverse remarks for the year 1982 contained in letter dated April 4, 1983 (Annexure-PJ);
- (c) to discharge the Petitioner from service on medical grounds on payment of pension and other terminal benefits in case the Respondents do not wish to retain him in service; and
- (d) to pay interest at the rate of 18% per annum on the amount of General Provident Fund withheld by the authority for a period of about four years.

2. The Petitioner was enrolled as a Peon in GREF (An Armed Force of the Union) on August 14, 1968. He also discharged the duties of a Storeman with effect from June, 1972 to November, 1973 and again from May, 1976 to July, 1978 efficiently and diligently. He has enclosed certificates of appreciation issued by

the authorities in his favour (Annexure-PA and PB respectively to the writ petition) According to the Petitioner he was posted at different places and discharged various duties. During the course of his employment he contracted a disease known as Grand Mal Epilepsy some time in the year, 1974. In the year 1978 he was posted as a Peon (Sepoy) in Headquarter Chief Engineer Project Sampark. It is asserted in the petition that the Petitioner proceeded on casual leave for 12 days with effect from 8-8-1982 to 20-8-1982 to his village, where, on 16-8-1982 he got an attack of epilepsy, on account of which he fell down and sustained serious injury in his back. He was given first aid treatment in the dispensary in his native village Houridevi, Tehsil Nurpur, District Kangra and later on was shifted to the Civil Hospital at Nurpur. According to the Petitioner, Medical Officer Incharge of the Hospital advised him to undergo treatment for a period of 1-1/2 to 2 years continuously. It is contended by the Petitioner that on account of the medical advice he applied for extension of his leave and also for financial assistance for his treatment. Alongwith his application for extension of leave the Petitioner also sent his medical certificate issued by the Medical Officer Incharge Civil Hospital, Nurpur. On receipt of his application the Camp Commandant Headquarters Chief Engineer Project Sampark addressed a letter (Annexure-PC) to the Civil Surgeon, District Kangra requesting him to examine the Petitioner and to give an opinion in case there appeared no reasonable prospects of the Petitioner to be ever fit to resume his duties. The Civil Surgeon was also requested to give the opinion in the medical certificate whether the Petitioner was permanently unfit for Government service. Copy of the letter was sent to the Petitioner advising him to report within two days of the receipt of the letter to the Civil Surgeon, Kangra alongwith history sheet of the treatment administered to him by the Medical Officer, Nurpur. It was further mentioned in the letter that request for leave would be considered only after receipt of the reply from the Civil Surgeon. It was also mentioned that in case the Petitioner did not report to the Civil Surgeon within the stipulated time, the desertion would be issued. According to the Petitioner there was no mention of the grant of financial assistance to him, in the letter.

3. The Petitioner was accordingly, taken to the Civil Hospital Dharamshala on November 16, 1982 where he was thoroughly examined by the Civil Surgeon, Kangra and was also prescribed treatment as per prescription (Annexure-PD). It is alleged by the Petitioner that Civil Surgeon, Kangra told him that the treatment had to be continued for three years. The Petitioner claimed that Civil Surgeon, Kangra must have sent his report to the Headquarters Chief Engineer Project Sampark, as requested vide letter (Annexure-PC) but the Petitioner did not hear anything from the Respondents. He therefore, sent an application dated January 5, 1983 to the Headquarters, Chief Engineer Project Sampark requesting him to grant him leave as there was no body else than his wife to lookafter him According to the Petitioner, he mentioned in the application that in case he gets epileptic seizure it might lead to a serious accident at any time and on this account it was not possible for him to report for duty. The Petitioner alleged that

be requested the authorities that in case the leave could not be granted to him, he may be discharged on medical grounds and given the pensionary benefits. He received letter dated February 1, 1983 (Annexure PE) requiring him to report to Military Hospital, Pathankot, for investigation and treatment. It was mentioned in the letter that there was no provision to accept resignation on medical grounds unless Medical Board had placed him in category IV. The Petitioner alleged to have pointed out the authorities that it was inspite of great financial difficulty that he was taken to Civil Hospital, Dharamshala and he was not receiving his salary and on account of the medical expenses on his treatment, it was not possible for him to report to the Medical Board at Military Hospital, Pathankot. He made a request that his salary may be sent to him so that he might continue his treatment. He also requested for the grant of leave and made further request that in case leave could not be granted to him, he may be discharged on pension. The Petitioner's wife also sent an application to the authorities pointing out that the Petitioner was in a critical state due to disease and was not in a position to move out of his house. The Petitioner's wife received copy of letter dated March 9, 1993 (Annexure-PF) addressed by the Camp Commandant to the Incharge. Police Station, Nurpur, to provide an escort/assistance so that the Petitioner could be evacuated to the Military Hospital, Pathankot. But, according to the Petitioner, the Police did not take any action on this letter. Another letter dated July 28, 1983 (Annexure-PG) was addressed by Camp Commandant to the Petitioner stating therein that his excuse of having disease "Grand Mal Epilepsy" for an indefinite period of absence was not free from doubt and needed to be examined. He was again asked to report to the Military Hospital, Pathankot within a week of the receipt of the letter failing which, necessary disciplinary proceedings would be initiated.

4. The Petitioner claimed to have sent his wife to personally apprise the authorities of his condition and the difficulty of shifting him to the Military Hospital Pathankot without any escort. She requested the authorities that an Ex-serviceman namely Badhawa Ram who was working in Yol and was prepared to escort the Petitioner to the Military Hospital, Yol be permitted to escort the Petitioner. A letter addressed to the Military Hospital, Yol was handed over to the wife of the Petitioner and the Petitioner was thereafter escorted to the Yol Hospital on 1-9-1983. The Petitioner was admitted in the hospital on 8-9-1983 and was kept as an indoor patient for one month four days and later on discharged on 11-10-1993 with the advice to continue treatment and was placed in the Medical category-III. Photostat copies of admission slip and discharge slip are attached as Annexures PH and PH/1 respectively. The Petitioner alleged that after his discharge from the hospital, he found himself in the same rather worst condition as he was not relieved of the pain in his back where he had received injury on account of his fall on 16-8-1982 under the fit of epilepsy and that he was unable to join his duty. The Petitioner therefore, sent an application through his wife on 15-10-1983 pointing out that on account of epileptic seizure, he used to fall down and he feared that he might meet some serious accident in one of

those seizures.

5. It is averred in the petition that the authorities all the times were taking unsympathetic and callous attitude towards the Petitioner and he was considered to be a malingerer in spite of the various medical reports. The authorities recorded adverse remarks in his A.C.R for the year 1982, which were conveyed to the Petitioner vide letter dated April 4, 1983 (Annexure-PJ). It is alleged that the wife of the Petitioner was handed over a letter dated 19th October, 1983 by Camp Commandant (Annexure-PK) and was also given a blank letter of resignation (Annexure-PL) directing her that she may get it signed from the Petitioner. The Petitioner made a request to the authorities vide his application dated 24-10-1983 in which he again narrated his condition and expressed his inability to be discharged on his own request, thus, loosing all the terminal benefits after putting in 15 years of service. He requested the authorities to discharge him on medical grounds so that he may receive the terminal benefits on account of discharge on medical grounds. But the authorities, however, turned down his request vide letter dated November 11, 1983 (Annexure-PM). The Petitioner ultimately, was discharged vide order dated February 21, 1984 (Annexure-PN) with retrospective effect i.e. 20-8-1982 (forenoon).

6. The Petitioner has further alleged that he had not been paid his salary during the period he got treatment at Civil Hospital Dharam-shala and Military Hospital at Yol and he had undergone considerable expenses on medicines and stay. His request for financial assistance and release of salary was ignored and his request for discharge on medical ground was treated as resignation at his own request and that the discharge amounted to removal from service. Petitioner made representation dated 28-3-1984 (Annexure-PO) through his lawyer. According to him he sent reminder dated November 2, 1984 and pointed out that he could not be discharged with retrospective effect as he had been on duty while getting treatment in Civil Hospital Dharamshala and Military Hospital, Yol under orders of the competent authority and even thereafter he had been requesting for grant of leave or alternatively, to discharge him on medical ground. He made the grievance that he had also not been paid even a penny on account of salary or out of his General Provident Fund, although he was in great financial difficulty. The Petitioner received reply dated December 7, 1984 (Annexure-PP), in which it was again stated that he had been correctly discharged with retrospective effect i.e. August 20, 1982 and it was further mentioned in the letter that the case regarding final settlement of his General Provident Fund was being pursued vigorously. The Petitioner ultimately, received crossed-cheque through letter dated 20/23rd June, 1986 for Rs, 3,006 towards the final payment of his General Provident Fund. The Petitioner has alleged that the resignation tendered by him was conditional for discharge on medical grounds and on payment of all the terminal benefits like pension etc. and the actions of the Respondents are illegal, ultra vires and in utter violation of Articles 14, 16 and 311 of the Constitution.

7. Counter has been filed to the writ petition on the affidavit of M. Manohar SO 2

(Resources) in Project Sampark C/O 56 A.P.O., on behalf of the Respondents Preliminary objection is taken that the writ petition is barred by delay and laches as the Petitioner was discharged in February, 1984 from service at his own request. It is averred in the affidavit that there was no evidence to show that the Petitioner had contracted a "Grand Mal Epilepsy" during his employment in 1974 as no endorsement was available in service record of the Petitioner having gone sick/obtained medical treatment at any stage in Military Hospital prior to 4-9-1983 when he was admitted in Military Hospital Yol. It is stated that the Petitioner had availed commuted leave on medical ground against a medical certificate with effect from 20-1-1980 to 8-5-1980 and no other leave was taken on medical ground by him. It is however, admitted that according to medical certificate furnished by the Medical Officer Civil Hospital, Nurpur, he was under treatment of the Medical Officer for disease "Grand Mal Epilepsy" since 17-8-1982. However, it is admitted that the Petitioner was granted 12 days casual leave with effect from 4th August, 1982. to 19th August, 1982. It is contended that no reply was sent by Civil Surgeon, District Hospital Kangra in response to letter dated 6-11-1982 (Annexure-PC). It is submitted that it was made clear to the Petitioner that his case needed to be examined by Military Hospital to consider his resignation on medical grounds and therefore, he was advised to report to Military Hospital, Pathankot forthwith. However, Petitioner did not report to the Military Hospital, Pathankot on the plea that there was no person to assist him physically and financially. However, it is contended that the wife of the Petitioner reported to H.Q.C.E. (P) Sampark and she was handed over a letter addressed to Military Hospital, Yol where he was treated and was placed by Medical Board in Medical Category-III with advice to appear before the next Board on 12-4-1984. It is also submitted that Category III is reviewed after a specified period either to upgrade the individual to Category-I or II or to down-grade to Category-IV being finally unfit for further service. It is also averred that the Petitioner was informed that he could not be discharged from the service with all terminal benefits, unless he was placed in medical Category-IV and invalidated out of service or on completion of 20 years of qualifying service. He was further advised by letter dated November 11, 1983 (Annexure-RG) that in case he did not intend to continue in service he could submit unconditional resignation. The Petitioner in response to letter dated 11th November, 1983 requested through application dated 19th November, 1983 (Annexure-RH) for discharge, after giving him such benefits to which he was entitled. According to the Respondents, the Petitioner did not appear before the next Board on 12-4-1984 for his categorisation and did not want to serve the Respondents even for a day. It is also stated that the Petitioner cannot be given any leave salary as no leave was due to his credit.

8. Shri D.K. Khanna, learned Counsel for the Petitioner has contended that the Petitioner had served the Respondents for 15 long years during which his service had also been appreciated by his superiors. According to him the discharge of the Petitioner from service with retrospective effect is unjust, illegal and amounts to removal from service. He has submitted that the Petitioner remained on leave on

account of disease contracted during his service and instead of granting him leave, adverse remarks in his A.C.R. for the year 1982 were recorded which are unwarranted and without any base. According to him, the Respondents withheld the payment of Provident Fund of the Petitioner for a period of nearly 4 years, while the Petitioner was in dire need of monetary assistance for getting himself properly treated. He contended that the Petitioner, as a result of treatment obtained by him is almost cured of the malady. His grievance is that the intention of the Respondents appears to be only to throw the Petitioner out of service on one pretext or the other.

9. Shri P.A. Sharma on the other hand has justified the action of the Respondents by urging that the Petitioner had remained absent without sanction of leave and had voluntarily tendered his resignation on the basis of which he was discharged from service. He asserted that the Petitioner was not entitled to pensionary benefits on medical ground as he had not completed 20 years qualifying service.

10. The preliminary objections of the Respondent that the writ petition suffers from delay and laches is not tenable. The Petitioner was discharged from service on 21st February, 1984. He made various representations to the authorities concerned. On December 7, 1984 he was informed through letter (Annexure-PP) that his claim for final settlement of General Provident Fund had been initiated and forwarded to the Audit Authorities. The final payment of General Provident Fund claim of the Petitioner was made on 20/23rd June, 1986 vide Annexure-PQ. The petition was filed on 23rd December, 1986.

11. The other points involved in this petition are, whether the order of discharge of the Petitioner and adverse remarks recorded in his A.C.R. for the year 1982 are legal and valid. From the material placed on file, Petitioner was found honest, efficient and obedient during his service upto July, 1978, as is evident from certificates Annexures-PA and PB respectively. The Petitioner was examined and treated by Medical Officer, Civil Hospital Nurpur for disease "Grand Mal Epilepsy" during his leave period in August, 1982 and was advised to undergo course of treatment for a period of 1-1/2 years to 2 years continuously. He was again examined by the Civil Surgeon, District Hospital, Kangra on 16-11-1982 on the written request of Respondent No. 2. The Civil Surgeon also found him sick of "Grand Mal Epileptic Seizure" as per his report (Ex. PD) and advised him to continue the treatment. Again Petitioner was admitted in Military Hospital, Yol on 8-9-1983 and was discharged on 11-10-1983. The discharge slip (Ex PH) shows that the pttitioner was advised not to be employed near fire, moving machinery, water and not to drive vehicle. He was further found unfit for high altitude. It is apparent that the Petitioner made a representation dated 15-10-1983 to Respondent No. 2 through his wife requesting his discharge from the service on medical grounds pertaining to physical disability arising out of the said disease, suffered during the course of employment as Peon. The wife of the Petitioner was handed over letter dated October 19, 1983 (Annexure-PK) alongwith a typed copy of resignation letter (Annexure-PL). The contents of the letter (Annexure

PK) show that the Petitioner had been requested that in case he was not interested to continue in GREF service he may apply for discharge at his own request and the same would be considered sympathetically. The resignation letter (Annexure-PL) was signed by the Petitioner against his wishes under the circumstances that he was neither granted leave, nor financial assistance and under the discreet state of mind. The Petitioner expressed his inability to perform his duties because of his serious ailment and under these circumstances, he wanted to get himself discharged from the service on medical grounds so that he might get pensionary benefits etc. The Petitioner belongs to low strata of the society of Scheduled Castes category. His case for extension of leave on the ground of his illness was not considered sympathetically by the authorities concerned. It appears that despite medical certificates issued by the Doctors, he was compelled to sign the resignation letter (Annexure-PL) sent to him by Respondent No 2 through his wife. Respondent No. 2 referred the case of the Petitioner for Medical Board from Military Hospital, Yol. The Medical Board met on October 12, 1983. The proceedings of the Board are placed on record as Annexure-RE The opinion of the Board was that the Petitioner contracted his disability during his service. The Board placed him in Medical category (III) and the category was recommended for 6 months with effect from 10th October, 1983 It was also further observed by the Board that the Petitioner should not be employed near fire, water, moving machinery and further not to drive vehicle. He was also found unfit in high-altitude. It was also recommended by the Board that the Petitioner required periodical review once in 6 weeks. All these documents go to prove that the Petitioner contracted the aforesaid disease while he was in service and it was incumbent upon the authorities concerned to grant him medical or other kinds of leave permissible under the relevant rules. The Petitioner at that time had put in more than 15 years of regular service in the Unit and there is nothing on the record to show that he had any reason to tender resignation except his disturbed state of mind. Therefore, the facts and circumstances on record leave no manner of doubt that the act of tendering resignation by the Petitioner was not voluntary but was an act of imbalanced mind and due to the threatening letter dated 28-7-1983 (Annexure-PI) issued by Respondent No. 2 in which it was unequivocally mentioned that disciplinary proceedings would be instituted against the Petitioner and further the Petitioner was warned that he was bound by Army Act/Army Rules wherein such neglects could be seriously dealt with. The discharge certificate (Annexure-PN) suffers from another illegality. The order of discharge was passed on 21st February, 1984 and was made applicable with effect from August 20, 1982 (forenoon). Similarly, the adverse remarks recorded in A.C.R. for the year 1982 and communicated on April 4, 1983 (Annexure-PJ) stating therein that the Petitioner was in the habit of overstaying his leave frequently on one pretext or the other is also unwarranted and based upon no material. The repeated representations made by the Petitioner against the non-sanction of leave and not granting him financial assistance during his period of treatment had not been considered or disposed of, but instead, adverse entry of absence from duty was recorded in his

A.C.R. for the year 1982. The course adopted by Respondent No. 2 to discharge the Petitioner from service was a serious error. During the course of hearing of the petition, the Respondents could not point out any valid reasons due to which they were prevented from not considering the case of the Petitioner for the grant of leave, when admittedly, he was under the disability to attend the duties and was also admitted in the Military Hospital, Yol.

12. By resignation an employee expresses his decision to relinquish his office or terminate the contract of employment. In respect of the meaning of expression "resignation", the observations made by the Hon"ble Judges of the Supreme Court in paras 24 and 23 of their judgment in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, are relevant. These are:

24. "Resignation" in the Dictionary sense, means the spontaneous relinquishment of one's own right. This is conveyed by the maxim: Resignatio est juris propii spontanea refutatio (See Earl Jowitt's Dictionary of English Law). In relation to an office, it connotes the act of giving up or relinquishing the office. To "relinquish an office" means to "cease to hold" the office, or to "loose hold of" the office (of Shorter Oxford Dictionary); and to "loose hold of office", implies to "detach", "unfasten", "undo or untie the binding knot or link" which holds one to the office and the obligations and privileges that go with it.

25. In the general juristic sense, also, the meaning of "resigning office" is not different. There also, as a rule, both, the intention to give up or relinquish the office and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation (see, e.g. American Jurisprudence. 2nd Edition, Volume 15-A, page 80) although the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. Thus, resigning office necessarily involves relinquishment of the office, which implies cessation or termination of, or cutting as under from the office. Indeed, the completion of the resignation and the vacation of the office, are the causal and effectual aspects of one and the same event.

Applying the principle referred to above, if resignation is relinquishment of one's right in respect of an office/post it cannot be tendered by a person who is not in a fit state of mind to think properly what to talk of taking an independent decision to terminate the contract of his service/employment. Therefore, we have no hesitation in holding that the so called resignation, alleged to have been tendered by the Petitioner in a mental state of distress on account of disease "Grand Mal Epileptic Seizure", and also under repeated threats from Respondent No. 2 in taking disciplinary proceedings against him for which copy of resignation letter was handed over to the Petitioner through his wife for signature, the same cannot be treated voluntary and has to be held as not binding on the Petitioner. Respondents could not have acted upon such an involuntary resignation. Even its acceptance from a prior date is bad in law.

13. For the foregoing discussion, the order dated 21st February, 1984 (copy Annexure-PN) discharging the Petitioner from service with effect from 20-8-1982 (forenoon) being bad in law is quashed and set aside. Consequently, the Petitioner is held to be in the service of Respondent No. 2 as Peon and entitled to all consequential benefits thereof. Similarly, extract of remarks contained in the A.C.R. of the Petitioner for the year 1982 dated 4th April, 1983 (Annexure-PJ) is also quashed and set aside. The authorities are directed to grant leave of the kind due in favour of the Petitioner during the period he remained absent during his illness and admitted in the hospital.

14. No other point was urged before us.

The petition is accordingly allowed with no order as to costs.