
(2010) 12 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1496 of 2004

Mr. Arvind Kumar Sinha

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 4, 5
Central Reserve Police Force Rules, 1955 — Rule 16, 17A

Citation : (2011) 1 JCR 516 : (2011) 1 JLJR 346

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred by the Petitioner seeking a writ of mandamus for quashing the direction issued by Respondent No. 2 dated 1st January, 2002, whereby, the Respondents have directed the Petitioner to make payment of Rs. 1,46,380/-, as the Petitioner has resigned from Central Reserve Police Force in February, 2001. This demand has been made under Rule 17A of the Central Reserve Police Force Rules, 1955 (in short "the Rules, 1955" for the sake of brevity)

2. Learned Counsel for the Petitioner has argued out the case, in much detail, and mainly submitted that the Petitioner had joined the Central Reserve Police Force with effect from 1st December, 1994.

3. The terms of appointment have already been referred in the letter of appointment, given to the Petitioner, which is at Annexure 1 to the memo of petition, which refers the fact that if the Petitioner resigns within three years on completion of training, the Petitioner will have to make payment of three months' pay and allowances or the actual cost of training, whichever is less. The Petitioner has served for more than six years and, therefore, as per the terms of appointment, the Petitioner is liable to make payment of three months' pay and allowances, because that amount is lesser than the actual cost of training.

4. Learned Counsel for the Petitioner has relied upon paragraph No. 4(iii) of the appointment letter, which is at Annexure 1 to the memo of petition. It is further submitted by the learned Counsel for the Petitioner that amendment has been brought in the Rules, 1955. The added rule is Rule 17A, which has been brought into force after joining the services of the Petitioner. Therefore, the same is not applicable to the Petitioner, but, it is applicable to the new comers in the services. It is further submitted by the learned Counsel for the Petitioner that Rule 17A does not prescribe any period and, therefore, a clarification has been issued by the Respondents, which is at Annexure 7/1 of the memo of petition. As per the clarification, issued by the Central Government, after ten years of regular services if any member of Central Reserve Police Force seeks discharge or seeks resignation, then he will not be liable to refund the pay and allowances of three months or the cost of training. But, this clarification is de-hors the Rules, because under Rule 17A of the Rules, 1955, there is no such limit of ten years. Moreover, learned Counsel for the Petitioner has submitted that there are several persons, who have resigned after three years add they have been allowed to resign without making any payment of three months" pay and allowances or the cost of training. It is also submitted by the learned Counsel for the Petitioner that, in fact, as per Rule 16 of the Rules, 1955, the Petitioner is not liable to make payment, because the Petitioner has already served for six years and he is a confirmed employed.

5. We have heard learned Counsel appearing for the Respondents, who has submitted that in view of Rule 16 to be read with Rule 17A of the Rules, 1955 to be read with clarification, issued by the Central Government, the Petitioner is liable to make payment of actual cost of training. It is further submitted by the learned Counsel for the Respondents that the resignation tendered by the Petitioner was later on withdrawn, which was not accepted by the Respondents and thus, the application for resignation was also rejected.

6. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that the present Petitioner had joined the services of Central Reserve Police Force with effect from 1" December, 1994. The terms of appointment, particularly Clause 4(iii) and 4(v), as referred in the appointment letter dated 11th November, 1994, reads as under:

"4. The other terms of appointment will be as follows:

xxx xxx xxx

iii) You will have to undergo a prescribed course of training. In the event of your resigning, the post during the period of training or within three years of its completion, you shall be required to refund the Government all the cost of training imparted to you in the force or an amount equal to three month"s pay and allowances, whichever is less.

(Emphasis supplied)

v) On joining the force, you will be governed by the CRPF Act, Rules and the manuals as amended from time to time and the Central Civil Service (Conduct) Rules, 1964 etc. as may be prescribed by the Govt. from time to time."

7. In view of the aforesaid condition, the Petitioner was liable to make payment of three months' pay and allowances or the cost of training, whichever is less, if the Petitioner resigns within three years of completion of training. It also appears from the facts of the case that thereafter Rule 17A of the Rules, 1955 has been inserted and proviso to Rule 16 has been omitted. Rule 16 and 17A of the Central Reserve Police Force Rules, 1955 reads as under:

"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 appointment 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 Services) 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 any accredited gazetted officer.

(d) The appointing authority may, during the period of initial appointment of a member of the Force appointed u/s 4 and 5 for 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."

xxx xxx xxx

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 enrollment, 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."

8. In view of the aforesaid provisions, it is insisted by the Respondents that the Petitioner has to make the payment of actual cost of training.

9. It appears that the Petitioner has served for six years, but, it is not clear whether he was working for quasi-permanency or not, because applicability of Rule 10 depends upon the nature of the post, held by the Petitioner. There are three types of posts as per Rule 16: Substantive status, quasi-permanency status and temporary. Those who are temporary, shall be liable to be discharged on month's notice and these who are quasi-permanent, shall be liable to be discharged on three months' notice. Initially there was a proviso under Rule 16 of the Rules, 1955. The said proviso to Rule 16 reads as under:

16. Period of Service.

xxx xxx xxx

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."

10. The aforesaid proviso has been omitted by Notification No. 145027/9/95-Pers.II dated 29.9.1995, published in the Gazette of G.O.I. Vide GSR No. 450 dated 14.10.1995, which is at Annexure 6 to the memo of petition. Thus. Rule 16(a) to (d) and Explanation (1) & (2) remained as it is. Clause (d) of Rule 16 of

the Rules, 1955, is applicable to the resignation by a member of the Central Reserve Police Force during the period of initial appointment, As per Explanation (1) of Rule 16(d). "period of initial appointment" means, a period before a member of the Force is declared quasi-permanent. Thus, status of the Petitioner is very much relevant. This status of Petitioner viz. Temporary, quasi-permanent or permanent has not been considered at all while passing an impugned order dated 1st January, 2002 (Annexure 8 to the memo of petition) by the Respondents. The Petitioner has "served for six years. Nothing is clear whether the Petitioner was given temporary status, quasi-permanent status or permanent status. As per the letter of appointment, the period of probation was two years and on successful completion of the period of probation, he was to be considered for permanent appointment as per paragraph No. 1 of the letter of appointment (Annexure 1 to the memo of petition). Rule 17A, which has been inserted subsequently, also refers Rule 16 of the Rules, 1955. Looking to the explanation, as referred at Annexure 7/1 to the memo of petition, which is a clarification issued on 16th December, 1999, it appears that if any member of Central Reserve Police Force is resigning after ten years of regular services, he will not have to make payment of three months' pay and allowances or the cost of training. There is no such limitation in Rule 17A. Moreover, status of the Petitioner is also not clear. We have asked learned Counsel for the Respondents that what is the status of the Petitioner, but, he is unable to give any details, because the period of probation is already over. The Petitioner has served for six years and thereafter, he has tendered his resignation. Rule 17A refers "a member of Force seeking resignation under Rule 16...." and Rule 16(d) refers "resignation during the period Of initial appointment". Moreover, it has been referred in paragraph No. 19 of the writ petition that several members of Central Reserve Police Force have been released without payment of cost of training. Paragraph No. 19 of the writ petition reads as under:

"19. That the Respondents have also indulged in hostile discrimination in allowing the following candidates/members of the Force similarly situated as that of the Petitioner by releasing them without payment of cost of training.

RANK

NAME

IRLA No.

Asst. Comdt.

Deepak Behl

3989

Asst. Comdt.

KulbhushanGoyal

4016

Asst. Comdt.

ShamsherBahdur Singh

4021

Asst. Comdt.

SitaramMeena

4032

Asst. Comdt.

Rajesh Kr. Chauhan

4030

Asst. Comdt.

Chitranjan Panda

4008

Asst. Comdt.

PuneetKohli

4005"

11. In view of the aforesaid facts, we hereby quash the order dated 1st January, 2002 (Annexure 8 to the memo of petition) and remand the matter to the concerned Respondent authority for deciding the liability of the present Petitioner in the light of the aforesaid observations, as the order at Annexure 8 to the memo of petition has not considered the aforesaid aspects. We, therefore, direct Respondent No. 3 to take a fresh decision without being influenced by the order dated 1st January, 2002 (Annexure 8 to the memo of petition), in accordance with law, and in view of the observations, made above, within a period of four months from the date of receipt of a copy of the order of this Court.

12. This writ petition is, accordingly, allowed and disposed of.