
(2000) 08 DEL CK 0049
In the Delhi High Court
Case No : Civil Writ No. 1398 of 1993

Naik Mohan Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 08 DEL CK 0049

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Mr. Bhupesh Narula, for the Appellant; Mr. Sameer Aggarwal, for the Respondent

Judgement

N.G. Nandi, J.—In this writ petition under Article 226 of the Constitution of India, the petitioner has been praying for writ of mandamus directing quashing of the order dated 21.12.1992 rejecting the petitioner's application for withdrawal of the voluntary retirement notice and ordering the petitioner to be in continuous service.

2. The say of the petitioner is that the petitioner initially joined 16 Punjab Armed Police on 26.11.1966 and was allotted No.16/293 and after undergoing basic training at Jalandhar Cantt., he joined duty in 21, Border Security Force (in short, B.S.F.) at Dera Baba Nanak on 7.9.1967; that during the service period, the petitioner passed the departmental tests conducted from time to time and was also transferred from one station to another and that on 1.3.1992, the petitioner was performing the duty of Naik in 96 Battalion, B.S.F., Srinagar; that in December, 1991, the wife of the petitioner fell seriously ill due to some internal female disease and there was no male member to attend to the ailing wife of the petitioner; that an application seeking grant of 60 days earned leave w.e.f.8.1.1992 was submitted; that the leave was not sanctioned and during this period, the condition of the petitioner's wife deteriorated further; that the petitioner was forced to submit a notice dated 1.3.1992 seeking voluntary

retirement on the ground that his domestic circumstances compelled him to seek voluntary retirement; that the respondents accepted the notice seeking voluntary retirement w.e.f. 31.5.1992(A.N.) and for three months" notice, respondent No. 3, granted 79 days earned leave and 9 days half pay leave w.e.f. 5.3.1992 to 31.5.1992 and also stating that this leave period would be leave prior to retirement and would run concurrently specifically stating that the petitioner would retire w.e.f. 31.5.1992 (A.N.) meaning thereby that the applicant was in service prior to 31.5.1992 for all intents and purposes; that the petitioner's wife responded to the treatment and started improving; that on 21.3.1992, the petitioner submitted an application addressed to respondent no.2 for withdrawal of the voluntary retirement notice; that vide letter dated 31.3.1992, the Deputy Inspector General, B.S.F., Rajouri Sector, addressed to the Commandant, 96, Battalion, B.S.F. with a copy to the petitioner, directed the petitioner to report to the Unit first and then request for withdrawal of the voluntary notice; that the Commandant, 96 Battalion, B.S.F., vide letter dated 2.4.1992 directed the petitioner to report to Unit immediately for processing the withdrawal of his application; that the petitioner in his withdrawal application specifically showed his intention to join duty just after expiry of earned leave i.e. 31.5.1992 as by that time, his wife would fully recover; that the petitioner was under impression that he has sanctioned leave, so he can join on 1.6.1992; that as the petitioner did not hear anything from the respondents regarding his withdrawal application, then the petitioner again wrote on 2.5.1992 to the Commandant, 96 Battalion, B.S.F. for withdrawal of voluntary retirement notice; that by reply dated 14.5.1992, by the Commandant, 96 Battalion, the petitioner was again advised to report to the Unit immediately failing which no action will be taken on the application; that after the letter dated 14.5.1992 till his leave expired on 31.5.1992, the petitioner did not hear anything from any corner till 7.9.1992 when on this date, he received a letter dated 1.9.1992 from the Commandant with which he referred to two previous letters and directed by saying "you are once again advised to report to this Unit immediately for taking further necessary steps."; that on receipt of the said letter on 7.9.1992, the petitioner proceeded to the Unit and joined the Transit Camp at Jammu on 9.9.1992, as the traffic was blocked for Srinagar where the 96 Battalion Unit was located; that the petitioner left the Transit Camp on 23.9.1992 for advance party Srinagar and finally joined the Unit 96 Battalion on 24.9.1992, at Air Field Srinagar; that the petitioner remained in the Unit till 24.12.1992(A.N.) though during this period from 9.9.1992 to 24.12.1992, the petitioner was not paid the diet money, ration money, pay and also Government Uniform yet his presence was marked daily and that on 21.12.1992, the petitioner received the order dated 21.12.1992 from the Commandant rejecting the withdrawal application on the ground that he has submitted the application for withdrawal at a belated stage and also failed to rejoin the Unit as directed by the office several times. It is the rejection of withdrawal of voluntary retirement notice which is challenged in the present writ petition.

3. The respondents by filing counter-affidavit refuted the claim of the petitioner, inter alia, contending that the petitioner served notice re- requesting for voluntary retirement which was accepted by the Commandant and was to retire from service on the afternoon of 25.10.1991; that he was granted 59 days LPR w.e.f. 28.8.1991 to 25.10.1991; that he was called back to the Battalion headquarters and his notice for voluntary retirement was withdrawn and he joined duty on 25.10.1991; that the petitioner again requested for voluntary retirement on 1.3.1992. After an interview with the Commandant, his request was accepted and accordingly, he was to retire from service on 31.5.1992; this time also, he applied for LPR 79 days earned leave and 9 days half pay leave w.e.f. 5.3.1992 to 31.5.1992 (upto the date of retirement) was granted as LPR; that before proceeding on LPR, he had signed all his pension papers and accordingly, papers were submitted to PAO, BSF, New Delhi; that the petitioner served notice for voluntary re- tirement twice on his own and he has become liability for the Unit as well as for the Force; that his case for withdrawal of his notice for voluntary retirement was not recommended for consideration; that the petitioner proceeded on voluntary retirement w.e.f. 31.5.1992. It is further contended that the petitioner physically reported in the Unit on 24.9.1992 and appeared before the Commandant; that he intimated his willingness to withdraw his notice of voluntary retirement with the conditions i) If his previous service is counted he is taken in the same rank i.e. as Naik; ii) If re- quest for immediate transfer from 96 Battalion is accorded.

4. The petitioner filed rejoinder and admitted that he had made request that he should be taken on duty as Naik as he as worked as Naik. It may be noted that in the rejoinder, there is no denial of petitioner having conditionally withdrawn notice of voluntary retirement as regards his immediate transfer from 96 Battalion is accorded. Thus, the withdrawal of notice of voluntary retirement was conditional on acceptance of his request for immediate transfer from 96 Battalion . 5. It is submitted by Mr.Bhupesh Narula, learned counsel for the petitioner that petitioner is entitled to withdraw his letter of voluntary retirement within the time prior to expiry of notice period.

It is a settled legal position as laid down in the case of Balram Gupta Vs. Union of India (UOI) and Anr, that the voluntary retirement notice of three months given by employee as required under the Rules, the employee would be yet within his right to withdraw notice of voluntary retirement within the time prior to expiry of notice period.

6. Annexure P-1 suggests that the petitioner applied for 60 days earned leave w.e.f.8.1.1992 for the purpose of getting his wife treated.

7. In the instant case, the petitioner served voluntary retirement notice dated 1.3.1992 (Annexure P-2). Perusal of the same suggests that because of domestic problems, the petitioner was seeking voluntary retirement with all pensionary benefits admissible under the rules. It is pertinent to note that Annexure P-2 does not mention that the voluntary retirement be granted from the specific date

namely the future date nor it is suggested there from that Annexure P-2 will be treated as three months notice for seeking voluntary retirement. Annexure P-3 is the order dated 5.3.1992 whereby the 79 days EL and 89 HPL were granted to the petitioner w.e.f. 5.3.1992 to 31.5.1992 which would run concurrently with the period of notice. It is suggested that on expiry of leave (LPR), the petitioner will retire from service as per the office order dated 3.3.1992 in the afternoon of 31.5.1992. Thus, it may be seen that the voluntary retirement, sought by the petitioner vide Annexure P-2 dated 1.3.1992, was to be effective from 31.5.1992. Annexure P-4 dated 21.3.1992 is the application for withdrawal of voluntary retirement notice whereby the petitioner has prayed that notice of voluntary retirement submitted on 1.3.1992 w.e.f. 31.5.1992 be cancelled and treated as withdrawn. Vide Annexure P-5 dated 31.3.1992, JAD (COMN) for DIG BSF, Headquarters, Rajouri Sector, Border Security Force, Rajouri (J&K), directed the petitioner in response to his application dated 21.3.1992 (Annexure P-4) to report in the Unit first and then submit his request for withdrawal of his voluntary retirement notice for further action. Annexure P-6 dated 2.4.1992 is yet another communication from AC/QM, for Commandant Hq.96 Battalion, BSF, advising the petitioner to report to 96 Battalion immediately for processing the withdrawal of notice for voluntary retirement. Annexure P-7 is yet another application for withdrawal of voluntary retirement notice by the petitioner. Annexure P-8 dated 1.9.1992 is the communication from 96 BN, BSF stating that in spite of Regd. A.D. letters dated 2.4.1992 and 14.5.1992, the petitioner has not reported for duty and the petitioner was once again advised to report to the Unit immediately for taking further necessary steps.

8. Annexure P-8 by the Commandant, 96 Battalion, suggests that two Regd. letters dated 2.4.1992 and 14.5.1992, (Annexure P-5 and Annexure P-6), were sent to the petitioner yet the petitioner did not report in the Unit and by Annexure P-8, the petitioner was once again advised to report to the 96 Battalion for taking further necessary steps. Thus, as far as respondents are concerned, vide Annexure P-8, dated 1.9.1992, last opportunity was given to the petitioner to report to his Unit 96 Battalion, BSF. It has been stated in the petition that Annexure P-8 dated 1.9.1992 was received on 7.9.1992 and the petitioner proceeded to the Unit and joined the Transit Camp at Jammu on 9.9.1992 as the traffic was blocked for Srinagar where the 96 Battalion Unit was located and left the Transit Camp on 23.9.1992 for advance party Srinagar and he finally joined the Unit 96 Battalion on 24.9.1992 at Air Field Srinagar. In paras 14-15 of the counter-affidavit, it has been stated that the petitioner physically reported in the Unit on 24.9.1992. There is no denial in the counter to the statement made by the petitioner that he received Annexure P-8 on 7.9.1992 and that he joined the Transit Camp at Jammu on 9.9.1992 as the traffic was blocked for Srinagar where the 96 Battalion Unit was located and the petitioner left the Transit Camp on 23.9.1992 for advance party Srinagar. Annexure P-9 dated 21.12.1992 is the impugned order whereby the petitioner's request for withdrawal of voluntary retirement notice came to be rejected and the reasons assigned for the same are

that the petitioner has submitted the application for withdrawal at a belated stage and also fails to join duty as directed by the office several times. It is pertinent to note that rejection of withdrawal of voluntary retirement is not because of the conditions put by the petitioner. It was open to the respondent to reject the withdrawal of voluntary retirement notice, even though given before the effective date, the same being conditional, but the respondent has not chosen to do so.

9. As far as submissions of Annexure P-4, dated 21.3.1992 i.e. application for withdrawal of voluntary retirement notice is concerned, the same cannot be regarded as at a belated stage inasmuch as the same was within the time prior to expiry of notice period i.e. much prior to effective date of 31.5.1992. The reason that the petitioner failed to rejoin the Unit as directed by the office cannot be accepted for the simple reason that Vide Annexure P-8, the petitioner was once again advised to report to the Unit 96 Battalion BSF immediately. There is no denial in the counter to the averment made by the petitioner that the communication dated Annexure 1.9.1992 was received by him on 7.9.1992 and that he join the Transit Camp on 9.9.1992 as the traffic for Srinagar was blocked where the 96 Battalion was located and that he left the Transit Camp on 23.9.1992. When vide Annexure P-8, Commandant 96 Battalion gave one more opportunity and once again advised the petitioner to report to Unit 96 Battalion, anything prior to Annexure P-8 pales into insignificance and the Explanation by the petitioner that Annexure P-8 was received on 7.9.1992 and that he joined the Transit Camp at Jammu as the traffic for Srinagar was blocked and that he left the Transit Camp on 23.9.1992 deserves to be accepted especially when the respondents have chosen not to deny the same.

10. In the above view of the matter, the petition is allowed. The impugned order dated 21.12.1992 Annexure P-9 is hereby quashed and the petitioner is ordered to be in continuous service with all consequential benefits. The petitioner is entitled to the cost which is quantified at Rs.5000/-.