
(2012) 08 GAU CK 0022
In the Gauhati High Court
Case No : Writ Petition (C) No. 6891 of 2010

Navin Ram, Ex Rifleman (GD) C/o. Commandant 22 Assam Rifles 99 APO APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Assam Rifles Act, 1941 — Section 63

Citation : (2013) 1 GLD 336

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : G.D. Joshi and Dr. R. Sarmah, for the Appellant; N. Borah, CGC, for the Respondent

Judgement

B.K. Sharma

1. The petitioner who has been discharged from service by the impugned order dated 30.06.2008 upon acceptance of resignation tendered by him, has filed this writ petition challenging the said order on the ground that the resignation from service offered by him being not voluntary, the same was inconsequential and ought not have been acted upon. Be it stated here that the petitioner had earlier filed a writ petition in the High Court of Uttarakhand at Nainital making the same grievance which was registered and numbered as W.P.(C) No. 562/2009, but the same was dismissed by order dated 01.07.2010 on the ground of lack of territorial jurisdiction. Thereafter the petitioner has filed the instant writ petition. The petitioner was enrolled in the Assam Rifles on 09.01.2004 as Sepoy Rifleman (GD) with Number 5000086-Y in the Alfa Company of the 22 Bn. Assam Rifles, C/o. 99 APO. Throughout the writ petition the petitioner has stated about his alleged victimization by the respondents which eventually resulted in discharge from service upon acceptance of the resignation tendered by him which according to the petitioner was not at all voluntary but was forcibly obtained from him. According to the petitioner his systematic victimization started from

18.02.2007 on which date the respondent No. 4 had interviewed him as a routine procedure.

2. According to the petitioner after the aforesaid interview with the respondent No. 4, he was detained in the Bn. Headquarter for duty and the respondent No. 4 ordered for his detailment as security guard within Bn. Headquarter. It has been stated that the petitioner was not allowed any weapon and that he was asked to perform his duty continuously without any replacement. In the writ petition, the petitioner has also stated about his hospitalisation and purported forceful administering of medicine including injection. It has been stated that such action on the part of the respondents was malafide. As stated in the writ petition the petitioner was confined in quarter guard firstly for a period of 18 days from 19.10.2007 and thereafter for 28 days rigorous imprisonment which according to the petitioner, was illegal as he did not commit any offence.

3. Further statement made in the writ petition is that the petitioner was sent to hospital for treatment and on 29.11.2007 and he was referred to Psychiatric Specialist in RIMS hospital, Imphal for his aberrant behaviour. During the course of treatment he was diagnosed as Substance Induced Psychosis. In paragraph-12 of the writ petition referring to such hospitalisation, the petitioner has extracted the following letter dated 13.11.2009 written by one Col. P.K. Sharma:

6.... On 29 Nov. 2007 the petitioner reported to unit hospital with aberrant behaviour and therefore was referred to psychiatric specialist at RIMS, Imphal where he was admitted till 07 Dec. 2007 as a case of Substances Adduced Psychosis. He was further hospitalized in unit hospital and composite hospital CRPF, Guwahati w.e.f. 14 May 2008 to 22 May 2008. The application for voluntary discharge (resignation) from service and other discharge documents were submitted by the petitioner on 07 Jan. 2008 and 14 Jan. 2008.

4. In paragraph-14 of the writ petition the petitioner has stated about his further hospitalization for the period from 19.02.2008 to 06.03.2008. Thereafter it was advised to send him on leave. The petitioner was again referred to composite hospital, CRPF at Guwahati where he had remained under treatment from 17.05.2008. The attending Doctor advised for keeping the petitioner under active supervision. In paragraph 17 of the writ petition, the petitioner has stated that he was shocked to learn about his discharge from service by order dated 30.06.2008. Thereafter he submitted representation which did not yield result. In paragraph-27 of the writ petition the petitioner has stated that although the respondent No. 2 by his letter dated 13.11.2009 (Annexure-9) stated about illegal possession of contraband substance (Hasish) and consequently awarded him 7 days rigorous imprisonment, but no quantity was specified. It is plea of the petitioner that such action on the part of the respondents was founded on malafide and colourable exercise of power.

5. The respondents have filed counter affidavit in which the allegation of victimization of the petitioner has been denied. According to the respondents, the

petitioner himself applied his release from service tendering resignation by his application dated 07.01.2008. As regards the plea of the petitioner that he was deployed for security duty, the respondents have denied the same with the statement that he was never deployed for any such duty. According to the respondents, the petitioner was found to be habitual addict of ganja and liquor and was also not amenable to discipline. His such habit was brought to the notice of his father with the advice for necessary counseling.

6. The affidavit further states that the petitioner was caught with contraband substance for which he was habitually addicted. He was awarded 7 days rigorous imprisonment on 06.11.2007 and further 7 days rigorous imprisonment on 08.02.2008 after a summary trial u/s 63 of the Assam Rifles Act. Referring to the representations submitted by the petitioner, it has been brought on record that his representation was disposed of by order dated 13.11.2009 rejecting the same.

7. In the reply affidavit filed by the petitioner, the stand taken in the writ petition has been reiterated. According to the petitioner, the resignation tendered by him was not a voluntary act on his part. It has been stated that he was made to sign some blank papers and the same was converted to his purported resignation letter. It has also been contended that even if the resignation tendered by him was stated to be legally valid, then also as per the provision of the Rules, he was entitled to withdraw the same within three months of acceptance and he having done so, the authority in the Assam Rifles was duty bound to accept the withdrawal of the resignation.

8. I have heard Mr. G.D. Joshi, learned counsel for the petitioner as well as Mr. N. Borah, learned CGC. I have also considered the entire materials on record including the records produced by the learned CGC which contained the resignation letter dated 07.01.2008.

9. Although the petitioner has alleged victimization by the respondents, but in absence of any disclosure of material particulars and malafide attributed to any individual officer, the same cannot be appreciated. The respondents have also denied the allegation. From the materials on record, it appears that the petitioner during his service tenure was found to be drug addict and in fact, he was caught with contraband substance, a fact the petitioner himself has admitted in the writ petition. It appears that the respondents tried their level best to treat the petitioner by hospitalizing him and providing medical treatment. The plea of the petitioner that his signature was obtained in a blank paper and later on it was converted to resignation letter, is not at all believable inasmuch as the resignation letter was written by the petitioner himself in his own hand writing.

10. As stated in paragraph-10 of the counter affidavit, the allegation that Naik/ Clerk Amar Bahadur Chhetri of A Company 22 Assam Rifles deceitfully obtained the signature of the petitioner on a blank paper in connivance with Subedar D.R. Sharma at the behest of unit commandant while he was admitted in unit hospital, is self contradictory inasmuch as in paragraph-8 and 11 of the earlier

writ petition referred to above, it was stated that Bn. 2nd in command (21C) company Subedar A.H. Khatri had deceitfully obtained his signature on blank paper while he was admitted in CRPF hospital at Guwahati on 19.02.2008.

11. In view of the above, it cannot be accepted that the respondents deceitfully obtained the signature of the petitioner on a blank paper so as to convert the same into a resignation letter. Apart from the above contradiction, the fact of the matter is that the resignation letter was written by the petitioner all by himself in his own hand writing. Further, had it been the intention of the respondents to force the petitioner to tender his resignation, they would have immediately accepted the resignation which the petitioner had offered on 07.01.2008 instead of waiting upto 30.06.2008. The records have revealed that the resignation letter in own handwriting of the petitioner tendered on 07.01.2008 was followed by another typed application dated 14.01.2008 submitted by the petitioner seeking voluntary discharge from service.

12. Above position now leads us to the second leg of submission of the petitioner that in view of the executive instruction under Rule 26 of the CCS (Pension) Rules, 1972, his representation for reinstatement that was submitted within 90 days of acceptance of the resignation letter ought to have been accepted. The petitioner has also placed reliance on the chapter on resignation in Swamy's Complete Manual on Establishment and Administration. The said chapter dealing with withdrawal of resignation has detailed the circumstances in which the resignation can be withdrawn, one of which is after release, i.e. after the resignation became effective. As per the said provision, the appointing authority may permit withdrawal of the resignation in case of permanent employee, subject to certain conditions, one of which is that resignation and resumption of duty is not more than 90 days.

13. The executive instruction under Rule 26 of the CCS (Pension) Rules, 1972 issued vide office memorandum dated 04.12.2007 also speaks of permissibility for withdrawal of resignation under certain conditions such as public interest etc., subject, however, to the condition that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than 90 days. The same office memorandum also speaks of the purpose of such provision which is, once a person is relieved of his appointment on acceptance of his resignation letter, the circumstances under which the individual resigned from the post materially changed soon after his resignation, thus making the purpose of his resignation infructuous. The time limit can also be relaxed in case of exceptional cases.

14. During the course of hearing of the writ petition, learned counsel for the petitioner on being apprised of the factual position relating to tendering resignation of the petitioner in his own hand writing and acceptance thereof long after six months, strongly emphasised on the need of the respondents to examine the case of the petitioner on the basis of the immediate representation

submitted by the petitioner on 21.07.2008 after acceptance of his resignation w.e.f. 30.06.2008 seeking reinstatement in service. In the said representation the petitioner had stated that he was shocked to receive the discharge order as he did not submit any resignation from service. However, the fact of the matter is that he had submitted the resignation letter in his own hand writing and the same was accepted after about six month w.e.f. 30.06.2008.

15. Another aspect of the matter is that the petitioner was under treatment and as per the own showing of the respondents in their counter affidavit, the petitioner was a psychiatric patient and that he was sent on leave from 17.03.2008 to 25.05.2008. On rejoining the duty from leave on 13.05.2008, the petitioner continued his abnormal behaviour and he was referred to composite hospital, CRPF, Guwahati for psychiatric treatment on 17.05.2008 wherefrom he was released on 22.05.2008 with low medical category S-3(T-24). As stated in the counter affidavit, medical category S-3 means "limited tolerance to stress, has recently recovered psychoneurosis to toxic confusional states or acute psychotic reaction of tem nature".

16. Although the Director General of Assam Rifles has disposed of the representation made by the petitioner vide Annexure-10 order dated 30.11.2009, but the said order does not deal with the above aspect of the matter. This order, however, is not under challenge. As in the affidavit in opposition, this order also states about illness from which the petitioner had suffered and his voluntary resignation from service. However, the fact that the petitioner had applied for reinstatement in service within the stipulated period of 90 days has not been dealt with in the order. Mr. Joshi, learned counsel for the petitioner strenuously argued for requirement of re-examination of the case of the petitioner in the light of the aforesaid provision of permissibility to withdraw the resignation within the stipulated period of 90 days. He also submitted that presently the petitioner is fully fit to resume his duty.

17. Considering all the above, while not interfering with the impugned order of discharge from service, the matter is remanded back to the Assam Rifles authority for examination of the case of the petitioner afresh as to whether his prayer for withdrawal of the resignation from service and reinstatement in service which he had made within 90 days of acceptance of resignation and discharge from service can be considered in view of the facts and circumstances indicated above. Let the examination be made by passing a speaking order as expeditiously as possible preferably within three months. Writ petition is disposed of without, however, any order as to costs.