

(1997) 11 DEL CK 0069

In the Delhi High Court

Case No : Civil Writ Appeal No. 4220 of 1997 and Civil Miscellaneous Appeal No. 8355 of 1997

Rahul Shukla

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-11-1997

Acts Referred:

Defence Service Army Regulations, 1987 — Regulation 105

Citation : (1997) 70 DLT 797 : (1998) RLR 361

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Nidhi Bisana and P.N. Misra, for the Appellant;

Judgement

Usha Mehra, J.

(1) Respondent issued circular dated 22nd July, 1994 containing guidelines in the matter of premature retirement/resignation" from service. It provided officers who have put in less than 20 years service can resign from service. Petitioner applied for the same but by impugned order his request was rejected. Feeling aggrieved he filed this writ petition.

(2) Briefly stated the facts of the case are that the petitioner joined Indian Army as Doctor in Army Medical Corps on 5th November, 1982. On 23rd March, 1993 he put up his papers seeking resignation on compassionate grounds. The respondent declined his request vide letter dated 10th November, 1993. The request of resignation was repeated by petitioner on 23rd March, 1994 but the same was returned to him to supply additional inputs. Third time petitioner put up his papers on 6th June, 1994 thereby giving detailed reasons inspire of the reasons furnished by him his request was not acceded to. The same was rejected on 15th February, 1995. However, on 24th August, 1987 respondent lay down guidelines for seeking premature retirement/resignation. Revised guidelines were issued on 22nd July, 1994. Respondent allowed release of similarly situated four officers. Aggrieved by the order of the respondent the petitioner filed a writ

petition which was listed as C.W. 770/95. This Court held that the resignation of an officer could be rejected if it was not based on adequate and justified reasons. Thus the overriding consideration was officer's continuation in service for a specific period was necessary to meet the exigencies of service and alternative arrangement could be made. It was further held that even in such a case the application for resignation could not be rejected. It could only be held in abeyance. The Court found that respondent had not disputed the reasons stated by the petitioner in his application for resignation. These facts by the respondent were neither found false nor inadequate nor unjustifiable. Accordingly directions were given to the respondent to form an opinion about the period for which the petitioner's continuation in service was necessary and how much time it would take to make an alternative arrangement. That petition was allowed and the Division Bench ordered that the case of the petitioner be considered afresh with sympathy and compassion. By the impugned order of 6th October, 1995 the request of the petitioner has been summarily rejected without assigning any reasons, hence this petition.

(3) At the outset, it must be mentioned that the Division Bench while considering the request of the petitioner to be released from the Army Service took note of all the relevant provisions of the Regulations for the Army governing the condition of service of the petitioner and in particular Regulations 104(d), 105(a), (f) & (g).

(4) Regulation 105(f) deals with the procedure to be adopted by Army Headquarter while considering the resignation of an officer. The application for resignation could be rejected which is not based on adequate and justifiable reasons,. The petitioner in his application gave detailed reasons for resigning which reads as under : My father expired well before I joined Army. My mother Along with my two sisters were living in my home town Baraut of Distt. Meerut (U.P.) in joint family .consisting of uncle, aunt and their children. Later, both my sisters got married and moved with their husbands. My mother was left alone and was being looked after well by the rest of the family members. She never stayed with me for more than four months during the past ten years of my Army service. She also does not want to part with the ancestral home.

(5) The facts stated by the petitioner in his application for resignation, the Division Bench observed, the respondent had not found these facts to be false nor inadequate nor unjustifiable. It was also observed by the Division Bench that the requirement of accepting the application for resignation is different than that of voluntarily retirement. A prayer for resignation has to be dealt with on different footing as the discretionary power vested in the authorities taking decision on application for resignation is limited and circumscribed. Division Bench also took note of the fact that the respondent having not doubted the facts of petitioner's reasons given in his application, could not have rejected his request particularly when the Colonel Commanding Officer having personally reviewed his application and being satisfied with the validity thereof. Division

Bench also observed that any higher authority to form an opinion different from the one expressed by the Colonel Commanding Officer must have been possessed of material concrete enough to form a different opinion which in this case was not so. Petitioner's request was not turned down on the ground of inadequate or not justifiable reasons but was turned down to meet exigencies of service. From these facts it is apparent that petitioner fulfilled the requirement of Regulation 105(f). Once petitioner fulfilled the requirement of Regulation 105(f) the only question left for consideration before the Division Bench was should the resignation of the petitioner be accepted. The Division Bench answered that since respondent declined the request of petitioner on the ground of exigencies of service hence respondent should be given opportunity to make alternative arrangement. Petitioner's resignation till then be kept in abeyance. This finds mention in paras 13 to 15 of the Division Bench decision in C.W.P. No. 770/95 which paras are reproduced as under :

PARA13. The ground on which the application has been turned down is the necessity of the petitioner continuing in service to meet exigencies thereof. That cannot be a ground for rejection of the application. It may be a ground for keeping the application in abeyance. Unfortunately on two occasions the grounds available for keeping the application in abeyance was utilised for rejecting the application.

PARA14. The petitioner moved the application for resignation earlier on 22.3.1993 and later on 6.6.1994. The respondents should have formed an opinion about the period for which the petitioner's continuance in service was necessary and how much time it would take to make an alternative arrangement. It is difficult to believe the authorities of the respondents could not have succeeded in making alternative arrangements during the period of over two years by this time and if that be so then it is not a happy reflection on them. (underlining is mine).

PARA15. Before concluding we may make it clear that we have not entered into appreciating and comparing the case of the petitioner with the cases of the four doctors cited by him in support of his plea of hostile discrimination. On the admitted facts we cannot resist observing that the case of the petitioner did stand on a better footing than the cases of the doctors on whom the respondents had spent substantial amounts in bringing them up as doctors for utility in the Army. (underlining is mine)

(6) In other words the respondents were given time by the Division Bench to consider till what time the resignation of the petitioner would be accepted because under the rules the respondent had to make alternative arrangement. The respondents instead of appreciating the directions of the Division Bench in proper prospective have come forward with the stand that it is their right to reject the resignation without assigning any reason Mr. Mishra, appearing for the respondent contends that if resignation as of right could be accepted then Division Bench should have held so. I am afraid the respondents have

deliberately and with a malafide intention shut its eyes to the verdict of this Court in C.W. No. 770/95. The Division Bench repeatedly held that resignation could not be rejected when it is based on adequate and justifiable reasons. This is stated in para 12 of the judgment. It can only be held in abeyance in order to facilitate the respondent to make alternative arrangement. It was in this backdrop time was granted to the respondent to re-consider the request of the petitioner. But unfortunately the respondent again committed the same mistake. Instead of telling the petitioner by which date his resignation would be accepted, it has declined his request. The Division Bench referred to the judgment of Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , even at the risk of repetition, would like to repeat the observations of the Apex Court to show how the respondents have treated the petitioner :

"BY entering into a contract of employment a person does not sign a bond of salary and a permanent employee cannot be deprived of his right to resign".

(7) These observations of the Apex Court aptly apply to the facts of this case.

(8) For the reasons stated above the impugned order is set aside. Directions are given to the respondent to intimate the petitioner within two weeks as to from which date his resignation would be accepted. Rule is made absolute but with no order as to cost.