
(1995) 08 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Appeal No. 770 of 1995

Rahul Shukla

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-08-1995

Acts Referred:

Army Act, 1950 — Section 27

Citation : (1995) 3 AD 698 : (1995) 59 DLT 573 : (1995) 34 DRJ 399

Hon'ble Judges : R.C. Lahoti, J; Lokeshwar Prasad, J

Bench : Division Bench

Advocate : S.S. Vats and P.S. Sharma, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) The petitioner having graduated in Medical Science in the year 1982 from the King George Medical College, Lucknow, was lucky enough having got an employment in Army. He was given a short service commission. All was going well as he was promoted as Major on 4.6.88. The young doctor while seeking entry in the Army Commission and having happily, hopefully and successfully served the army for about 10 years could not have anticipated a change in his family circumstances which would persuade rather compel him in resigning from the army.

(2) On 22.3.93 he filled-up the prescribed proforma and submitted it as his application for resignation (Annexure P-1). Vide Section Ii of the application the petitioner has stated the following grounds in support of his application for resignation.

"(B)My father expired well before I joined Army. My mother Along with my two sisters were living in my home town Barant of Distt- Meerut (UP) in a joint family consisting of uncle, aunt and their children. Later, both my sisters got married and moved with their husband. 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.

(C) Recently due to some domestic problems, the family decided to adopt nuclear family sys

(D) Due to this sudden destabilisation in my family, I no longer feel mentally and physically fit to continue in service. Hence, I am constrained to render my request for premature retirement/resignation on extreme compassionate grounds, voluntarily and unconditionally."

(3) The petitioner also appended a certificate to the application stating that he was resigning from his commission voluntarily and unconditionally without any terminal benefits and obligation to serve in the regular Reserve of Officers. The petitioner was not involved in any disciplinary/vigilance cases. The Colonel Commanding Officer made a personal .review of the petitioner"s request for resignation on compassionate grounds and felt satisfied that they were valid. He recommended and forwarded the application. On 30.11.93, the petitioner was informed that his request of resignation was not agreed to by the Adjutant General. On 6.6.94, the petitioner made yet another application and the subsequent story is the same as it was with the earlier application up to the Colonel Commanding Officer having personally reviewed and satisfied himself of the validity of the petitioner"s prayer and having recommended and forwarded the same.

(4) The petitioner was informed vide communication dated 15.2.95 of his above application for resignation having been considered and rejected by the Competent Authority.

(5) On 6.3.95, the present petition has been filed. The petitioner has cited at least four instances of the doctors serving in the army and similarly situated as the petitioner is, whose applications for resignation were promptly accepted by the respondents. It is further pointed out that out of the four, two were such doctors who had taken training at the cost of the respondents and yet they were allowed to leave the army and go away. The petitioner fails to understand why his application could not have been favorably considered though he was a fully qualified doctor when he had entered the army and the army had not incurred any expenditure on his professional learning or training.

(6) In the counter, the defense taken by the respondent is that the competent authority has the discretion to accept or not to accept an application for resignation. In the case of the petitioner, the application was rejected because the respondents were having shortage of general duty medical officers, young in age who could work more energetically. To quote from the counter:-

"IT is submitted that there has been a shortage of young Medical Officers in the Amc which has been adversely affecting the functioning of the organisation. Therefore, due care is taken in granting permission to resign or to take

premature retirement. As regards petitioner's contention that some officers were allowed to leave whereas he was not, it is submitted that each case is decided on its own merits keeping the organisational interests and those of the individuals in view. The officer's contention that the decision to reject the application is arbitrary, is devoid of truth."

(7) With the petition, a copy of the circular order dated 22.7.94 (annexure P-5) containing guidelines in the matter of "premature retirement/resignation from service : Amc Officers", has been filed. Vide para 5 thereof it is provided :-

"OFFICERS who have put in less than 20 years of service can resign from service."

(8) At the time of hearing, few provisions of Regulations for the Army-Volume I (at pages 46-47) have been-brought to our notice. We extract and reproduce the relevant paras there from as under:-

"104(D)An officer will not be relieved of his duties until receipt of intimation that his application to retire or resign has been accepted. An officer whose application to retire or resign has been accepted may apply to the Central Government for his application to be cancelled. In the case of officers who have once proceeded on leave pending retirement, permission to withdraw such applications will only be granted in exceptional circumstances. The decision of the Central Government on all applications to retire will be final.

105(A)Application for resignation/retirement.

(A)Application of officers of the Army to resign their commission or to retire from the service will be forwarded through the prescribed channels to Army HQ. The applicant need not give a prospective date from which it is desired that the retirement/resignation should take effect as it may not be administratively convenient for the competent authority to take a decision by a desired date. However, if an applicant desires to retire from a specified date for any valid reasons, such as commutation of pension or higher rate of pension, he may indicate a prospective date in his application and submit his application not less than 4 months before that date. In the case of retirement with requisite qualifying service for pension, the applicant will also state where he wishes to draw his pension.

(F)The applications for premature retirement/resignation will be examined by Army Hq and submitted for consideration and approval of the case, who may reject an application which is not based on adequate and justifiable reasons at his level without reference to the Government or recommend for acceptance by the Central Government. In case, the officer feels aggrieved by the decision of the case, he can, if he so chooses, file a statutory complaint addressed to the Central Government under the provisions of Section 27 of the Army Act. The decision of the Central Government on application to retire premature/resign will be final.

(G)Where the Central Government are satisfied that the officer's continuance in service for a specified period is necessary to meet exigencies of service and alternative arrangements cannot be made, they may order holding the retirement/resignation order in abeyance."

(9) Let us first proceed to examine the concept of resignation as known to service jurisprudence. Fortunately we have a pronouncement of the Supreme Court wherein their Lordships, having made a comparative reading of voluntary retirement qua resignation, have proceeded to state the law as to resignation in *J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others*, , as under:-

"WHEN an employee resigns his office, he formally relinquishes or withdraws from his office. It implies that he has taken a mental decision to sever his relationship with his employer and thereby put an end to the contract of service. As pointed out earlier just as an employer can terminate the services of his employee under the contract, so also an employee can inform his employer that he does not desire to serve him any more. Albeit, the employee would have to give notice of his intention to snap the existing relationship to, enable the employer to make alternative arrangements so that his work does not suffer. The period of notice will depend on the period prescribed by the terms of employment and if no such period is prescribed, a reasonable time must be given before the relationship is determined. If an employee is not permitted the terms of his contract to determine the relationship of master and servant, such an employment may be branded as bonded labour. That is why in *Central Inland Water Transport Corporation V. Brojo Nath Ganguly* this Court observed as under: (SCC P.228, para Iii

"BY entering into a contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would however, normally require to be accepted by the employer in order to be effective."

(10) There may be substance in the submission of learned counsel for the respondent that the service jurisprudence applicable to the civil services cannot be ipso facto extended and applied to defense services which are a class by themselves and therein considerations of secrecy, and of safety, security and sovereignty of the country have vital role to play enabling personal interest to be sacrificed for or giving way to the larger interests of the nation. Yet it cannot be forgotten that the persons serving the army are citizens of the country and the authorities in the army are subject to the Constitution.

(11) Assuming that the right of an army personnel to resign from his commission in army may not be so wide and absolute as it may be in civil services, yet the authorities in the army are bound to follow the regulations of the army and they have to play within the four corners laid down thereby subject to provision of law. A reading of the several provisions of that Section of the Army Manual which

deals with the removal resignation and retirement of army personnel, specially the provisions which we have quoted hereinabove, in our opinion, leads to a few inferences. The applications for voluntary retirement or resignation though dealt with on similar footing do not in fact deserve so. While an application seeking voluntary retirement is fettered by several riders and discretion lies with competent authority to accept or not to accept the prayer; 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.

(12) An application for resignation may be rejected if it is not based on adequate and justifiable reasons. The over-riding consideration is whether the officer's continuance inservice for a specific period is necessary to meet exigencies in a service and alternative arrangements cannot be made. Even in such a case the application for resignation cannot be rejected. It Can only be held in abeyance. In the case at band it is not the case of the respondent that the facts stated by the petitioner in his application for resignation were false or were not adequate or not justifiable. That finding could not have been arrived at in as much as the Colonel Commanding Officer having personally reviewed the application, was satisfied of the validity thereof. 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 it is not so.

(13) 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.

(14) The petitioner moved the application for resignation earlier on 22.3.93 and later on 6.6.94. 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.

(15) 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 then the cases of the doctors on whom the respondents had spent substantial amounts in bringing them up as doctors for utility in the army.

(16) For the foregoing reasons, the petition is allowed. The impugned order on

which is based the communication dated 15.2.95 (annexure P-6) is hereby quashed. The respondents are directed to take up for consideration afresh the petitioner's application for resignation, with sympathy and compassion, and pass an order thereon within a period of two months from today consistently with clauses (f) & (g) of para 105 of Regulations for the Army, Volume 1. No order as to the costs.