
(2007) 01 DEL CK 0090

In the Delhi High Court

Case No : Writ Petition (C) No. 3775 of 2003

Rajeshwar Singh Negi

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Citation : (2007) 138 DLT 587

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : Rekha Palli, for the Appellant; Meera Bhatia, for the Respondent

Judgement

Swatanter Kumar, J.—The petitioner took Civil Services Examination (CSE), 1993 and upon declaration of the result was allocated to

CISF Group "A" Service provisionally. The petitioner with an intention to improve his prospects took the permission from the DoPT to appear in

the following Civil Services Examination, 1994, which was granted to him and resultantly, the petitioner was selected again and recommended for

the appointment on the basis of 1994 results. Pending actual postings, the petitioner was asked to join National Industrial Security Academy

(NISA) at Hyderabad for basic training of CISF Group "A" officers commencing from 2nd January, 1995. The petitioner was sent for Foundation

Course pending finalization of service allocation on the basis of his results of Civil Services Examination, 1994. Generally, the final service

allocation is done by the DoPT, the nodal Ministry for CSE on the conclusion of the Foundation Course. Thus, all the candidates join the

Foundation Course without knowing the final service allocation to which they may be allocated. After completion of 4 months of Foundation

Course, the petitioner relinquished the charge. Thereafter, the petitioner joined National Industrial Security Academy (NISA) on 1st January, 1996. The petitioner proceeded on sanctioned leave w.e.f. 16th January, 1996 to 21st January, 1996. Due to illness, the petitioner was not able to join back at National Industrial Security Academy (NISA) after expiry of his leave. He sent a leave application along with medical certificate which, according to the petitioner, would be deemed to have been accepted in terms of Leave Rule 19(3) as no refusal of leave was communicated to the petitioner. The petitioner was also entitled to improve/change in allocation of service as this finalization of allocation continued up to March, 1996. The improvement option of the petitioner unfortunately did not materialize. Thus, the petitioner came to know in March, 1996 that he had not been allotted to any higher preference service and as such, his allocation to CISF would now become final. Faced with this situation, the petitioner wanted to exercise the option of resigning from his service and he submitted his resignation on 7th March, 1996, the copy of which has been placed on record as Annexure-P/7 to the Writ Petition. The resignation of the petitioner was forwarded to the DG/CISF through Director, National Industrial Security Academy (NISA), who forwarded the same by post as well as through wireless MSG No. 1002 dated 22nd March, 1996 recommending its earlier acceptance. The petitioner has also placed on record the copy of the said letter as Annexure-P/8 on the Court file. According to the petitioner, at the time of his resigning he was neither offered any regular post of Assistant Commandant, CISF nor the petitioner had signed any agreement as required under the terms and conditions of his appointment. After the submission of the unconditional resignation by the petitioner, various communications were received from different Authorities by the petitioner directing him to deposit different amounts as a condition precedent for acceptance of his resignation. The petitioner submitted detailed replies to all these letters stating that as per the Rules, he was not required to deposit any amount as he had not been appointed to any post nor had he signed any agreement mandating any specific performance on his part as a condition precedent to acceptance of his resignation. The petitioner for all the period had not received any salary or remuneration from CISF Unit till the date of his resignation, i.e., 7th March, 1996. As the allocation process

in the DoPT kept continued till March, 1996, the appointment letters were, in fact, issued by the DG, CISF only on 23rd April, 1996, i.e., nearly 2 months after the petitioner had submitted his resignation from the post. The petitioner wrote various letters to the respondents but of no avail and the respondents persisted with their demand. The petitioner claims that he did not receive any communication informing him that his resignation has not been accepted and that he should join his duties. The petitioner received a Memorandum dated 2nd March, 2000 on 11th April, 2000 stating that the petitioner was unauthorizedly absent. The said Memorandum reads as under:

Directorate General

Central Industrial Security Force,

(Ministry of Home Affairs)

Block No. 13, CGOs Complex,

Lodhi Road, New Delhi-3

Dated, the 02 March, 2000

No. V-15014/10/99-L & R

MEMORANDUM

The President proposes to hold an enquiry against Shri R.S. Negi, Assistant Commandant/CISF under Rule 14 of the Central Civil Services

(Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehavior in respect of which the inquiry is

proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or

misbehavior in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the

articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV).

2. Shri R.S. Negi, Assistant Commandant is directed to submit within 10 days of the receipt of this memorandum a written statement of his defense

and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, Therefore, specifically admit

or deny each article of charge.

4. Shri R.S. Negi, Assistant Commandant is further informed that if he does not submit his written statement of defense on or before the date

specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of

Rule 14 of the CCS (CCA) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the enquiry against him ex-parte.

5. Attention of Shri R.S. Negi, Assistant Commandant is invited to Rule 20 of the Central Civil Service (Conduct) Rules, 1964, under which no

Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in

respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of

any matter dealt with in these proceedings it will be presumed that Shri R.S. Negi, Assistant Commandant is aware of such a representation and

that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.

6. The receipt of the Memorandum may be acknowledged.

By Order and in the name of the President

(SHAFI ALAM)

DY. INSP. GENERAL (PERS)/CISF

To

Shri R.S. Negi,

Assistant Commandant, CISF

2. The petitioner submitted his detailed reply on 17th April, 2000 giving various facts and circumstances and also stating that he had not committed

any misconduct and requested that his resignation be accepted and the proceedings against him be closed.

3. The respondents initially filed a short affidavit in September, 2003 stating that the enquiry was conducted against the petitioner and the enquiry

report was sent to the petitioner at his residential address. The notices sent by the enquiry officer were returned with the remarks ""Refused to

Receive Returned to Sender"". where after the enquiry officer completed the enquiry report and submitted his report that the charge sheet and

memorandum dated 2.3.2000 was received by the petitioner and he had submitted his reply.

4. In the subsequent detailed counter affidavit filed by the respondents on 6.2.2004, it is stated that after completion of the departmental enquiry,

the disciplinary authority had referred the matter to the UPSC for its advice which advised the respondents that ends of justice would be met if

penalty of dismissal from service is imposed upon the petitioner. This advice of the UPSC was accepted by the disciplinary authority and

accordingly a final order dated 8.4.2002 was passed.

5. Thereafter, the respondents also filed reply to the additional affidavit of the petitioner and took the stand that three notices were served upon the

petitioner for deposit of the amount. Actual amount to be paid by him was only Rs. 17,803/- and it was clarified that Rs. 18,661/- was the training

cost as circulated vide CISF circular No. Trg./01/1995 dated 5.10.1995 and remaining were the other charges recoverable by the Government.

After calculating the training cost, three months' salary and other dues were to be paid by him to the respondents and after deducting the mess

caution money deposited by him, the petitioner had to pay the amount claimed. As such, there was no variation in any of the notices of demand

and amount of Rs. 14,562/- was the un-disbursed amount which was not paid to the petitioner and was deposited in Government account. It is

specifically pleaded by the respondents that the moment the petitioner joined the foundational course in furtherance to his letter of appointment, he

became member of the armed force and on allocation of CISF, he was directed to join NADT, Nagpur and as such, he was in Government

service while under training. As the resignation of the petitioner was never accepted, he continued to be in service and remained unauthorizedly

absent which resulted in passing of the impugned order. According to the respondents, the petition of the petitioner is liable to be dismissed.

6. Learned Counsel appearing for the petitioner while relying upon the judgment of the Supreme Court in the case of Director, Navodaya

Vidyalaya Samiti and others v. Babban Prasad Yadav and Anr. (2004) 13 SCC 568, contended that the petitioner could be permitted to tender

unconditional resignation at any stage and particularly keeping in view the facts and circumstances of the case, the respondents ought to have

accepted the resignation of the petitioner and in any case, the petitioner could even now be permitted to resign as it would cause no prejudice to

any person. He relied upon the following observations of the Bench in the said case:

11. The High Court particularly erred in requiring that such a charge needed to be proved beyond all reasonable doubt. This is against the

principles governing a departmental enquiry in general and the unchallenged rules of the appellant institution in particular. The reason sought to be

given by the Director for dispensing with the enquiry has been held by the High Court to be ""unconstitutional and not legal"". This finding is also

unacceptable since the Director has used the language of the rule. Furthermore, having regard to the approval of the rule in question in the decision

of Avinash Nagra it was not open to the High Court to have come to the conclusion that the reason given by the Director for dispensing with the

enquiry was unconstitutional or illegal.

12. In the circumstances, we allow the appeal and set aside the order of the High Court. However, having regard to the submissions of the learned

Counsel appearing for the respondent we grant the respondent an opportunity to tender his unconditional resignation to the institution with effect

from the date of the order of termination. If such letter of resignation is given within a period of four weeks the appellant institution will accept it.

After the acceptance of the resignation, the order of termination will be withdrawn by the appellant.

13. Place the matter in the list two weeks after the reopening for further directions.

7. As is evident from the above-noticed facts, the petitioner had gone on leave w.e.f 16.1.1996 and thereafter submitted his resignation on

7.3.1996. The departmental enquiry was commenced in the year 2000 resulting in passing of the impugned order. According to the respondents,

the petitioner having joined the course in furtherance to the letter of appointment in the CISF, had become the member of the Force and, thus,

could be removed from service as contemplated under Rule 11(viii) of the CCS CCA Rules. Reference was also made to Clause (xi) of the letter

of appointment dated 23.4.1996 wherein it is stated ""if at any time after joining service in the Organisation, you intend to tender your resignation

from service either on personal grounds or to accept a job under any Deptt./ Office of the Govt. or outside, your resignation will be acceptable only

after you refund to Govt. a sum of 3 months pay and allowances on the basis of pay and allowances last drawn by you or if you have not

completed 3 months service, then on the basis of the pay and allowances to which you are entitled in the month in which you tender your

resignation"". According to the respondents, this was duly accepted by the petitioner and despite request, he did not pay the amount in terms of the

said clause and as such, his resignation could not be accepted and the departmental enquiry held against the petitioner was justified in law and was

in accordance with the procedure established under the Rules.

8. According to the petitioner, he had not joined the service and in terms of the referred clause, he was not liable to pay any amount. It is also the

case of the petitioner that the respondents had never rejected the request of the petitioner for resignation. On the contrary, the matter was kept

pending for all this time and the departmental enquiry was conducted in violation of the principles of natural justice. The notices demanding the

amount from the petitioner were replied to by the petitioner wherein he had taken up the stand that there was no liability upon him to pay such an

amount and at no point of time, the petitioner was communicated that his request for resignation had been rejected by the concerned authorities.

On the contrary, it is submitted that it is admitted on record that more than an amount of Rs. 14,000/- of the petitioner was lying with the

respondents and they could have easily adjusted the said amount and accepted the resignation of the petitioner. The petitioner was never

unauthorizedly absent but, in fact, his leave was sanctioned and during leave, he had resigned which was permissible as per the terms of the letter

of appointment.

9. During the pendency of this writ petition and after hearing the counsel appearing for the parties at some length, A Division Bench of this Court

vide its order dated 18th May, 2005 stayed the operation of the order of dismissal dated 8th April, 2002 and observed as under:

Petitioner's main grievance is that even though he had tendered his resignation way back in March 1996, respondents had failed to pass any

orders on his letter of resignation within any reasonable period of time and had

left his offer of resignation unattended but on the contrary had proceeded to take disciplinary proceedings against him and to dismiss him from service which had rendered him ineligible for any further employment even though he was qualifying the service examination successfully. It is not possible to determine the controversy on merits at this stage. At the same time, petitioner can't be left high and dry and rendered ineligible for any further employment for good. Because his dismissal would stall his employment even if he qualifies in a competitive service examination and would have the consequence of rendering him unemployed which in turn would have the consequence of destroying his life for good. Petitioner can't be left to fend for himself in such a situation, more so respondents action prima facie appears to ignore his resignation and their failure to take a decision on this entitles him to an interim relief pending disposal of this petition. Therefore, all facts considered, we are left with no option but to say the operation of the impugned dismissal order dated 8th April, 2002. This order shall have no adverse consequence on petitioner's future employment, nor shall it be read to constitute any obstacle for this.

Process the writ petition for hearing on 8.11.2005.

10. Again vide order dated 27th September, 2006, it was noticed by the court that the petitioner had handed over to the counsel for the respondents a draft for a sum of Rs. 17,803/-, the total amount payable for acceptance of his resignation. After passing of this order, the learned Counsel appearing for the respondents had taken adjournments for seeking instructions and later on informed the court that it was not possible to accept the resignation of the petitioner at this stage as the payment was being made after lapse of considerable time.

11. We are least impressed by the stand of the respondents and it appears to be an action of bias mind. There is no misconduct alleged on the part of the petitioner except the unauthorised absence which, in fact, loses its significance that there is a long drawn correspondence placed on record between the parties showing that the respondents were willing to accept the resignation but for payment of the amount and the petitioner was denying his liability to pay the amount. It is admitted on record that a sum of more than Rs. 14,000/- was lying with the respondents for all this time in the credit of the petitioner. They could have adjusted this amount and put an

end to the controversy or in alternative, should have timely conveyed to the petitioner in no uncertain terms that his request for resignation from service has been rejected and he should report for duty at the earliest. This was certainly not done at the initial stages. The respondents opted to correspond with the petitioner and thought of framing articles of charge of misconduct as late as on 2.3.2000, i.e. nearly four years later to the alleged incident. Vide their letter dated 21st July, 1998 i.e. nearly two years later, the respondent wrote to the petitioner as follows:

Reference this Office letter No. E-33014/Ad.I/RSN/4RB/971723 dated 14 May'98 and even No. 1930 dated 5 June'98.

2. In spite of repeated reminder you have not yet deposited Rs. 17,803/- on account of training charges etc. Please arrange to send the same immediately by means of bank draft drawn in favor of Commandant/DDO CISF 4th rest Bn. Tank P.O. Hatia, Ranchi (Bihar) payable at State Bank of India Boranda Ranchi (Code No. 0212) so that your case for acceptance of resignation could be settled early by Force HQrs New Delhi.

3. Treat this as Most Urgent.

12. The above correspondence clearly shows that the respondents had no objection to the acceptance of the resignation but for the payment of the amount indicated in this letter. The petitioner was on leave and his request for resignation was pending consideration for all this time. Of course, the petitioner has been absent but the entire enquiry has been held ex parte at the back of the petitioner and not in strict compliance to the CCS CCA

Rules. We will prefer to follow the dictum of the Supreme Court in the case of Director, Navodaya Vidyalaya Samiti(supra) where the court

granted a last chance to the petitioner to resign and directed the respondents to accept the same. The facts and circumstances of the present case,

in fact, are at a better footing as the respondents themselves delayed the entire proceedings for years together before taking action for the alleged misconduct.

13. Having given our serious consideration to the facts and circumstances of the case, we will set aside the order dated 8.4.2002 and direct the

respondents to consider and accept the request of resignation made by the petitioner in accordance with rules. The petitioner would be liable to

pay the sum of Rs. 17,803/- but with simple interest @ 6% p.a. right from the

year 1996 till 31st December, 2006 as the delay in making the said payment is attributable to the petitioner himself and he cannot take advantage of this delay. The respondents shall also be at liberty to adjust the sum of Rs. 14,000/- and odd which is stated to be lying with the respondents and inform the petitioner within one week from the date of pronouncement of this judgment, the exact amount payable by the petitioner to the respondents in terms of the above order. However, if the petitioner defaults in making the said payment by the date indicated in this judgment, the order dated 8.4.2002 shall stand automatically revived and the petitioner would be deemed to have been dismissed from service.

14. The writ petition is accordingly disposed of while leaving the parties to bear their own costs.