

(2007) 03 DEL CK 0012

In the Delhi High Court

Case No : Writ Petition (C) 12541 of 2004

Rajinder Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-03-2007

Acts Referred:

Border Security Force Rules, 1969 — Rule 19, 19(2)

Central Civil Services (Pension) Rules, 1972 — Rule 48A, 48A(2)

Citation : (2007) 140 DLT 7

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : S.S. Dahiya, for the Appellant; Gaurav Duggal, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—The petitioner was serving as a Head Constable in the Border Security Force. He was for some time attached to the Central Sports Team as a wrestling coach from where he was detached in July, 1995. He was supposed to join his duty in 41 Batallion, BSF on 24th September, 1995. Instead of doing so, he reported late on 1st November, 1996 thereby over-staying the authorised period by 402 days. A court of inquiry was conducted and sent to the Force Headquarter at New Delhi, who gave quietus to the matter by regularizing the period of unauthorised absence.

2. In the meantime, the petitioner had proceeded on leave from 3rd April, 2002 to 30th April, 2002. He was supposed to join back on duty on 1st May, 2002 on the expiry of the sanctioned leave which he failed to do. His request for extension was turned down in the absence of any medical certificate supporting the same. The petitioner however continued to absent from duty. He failed to join back at the place of his posting despite an intimation sent to him to do so. A court of inquiry was once again conducted into his absence and submitted to the Force Headquarter for necessary action. The Force Headquarter in turn directed the issue of an apprehension roll to the concerned police authorities for

apprehending the petitioner. A team was accordingly sent to the native place of the petitioner in Sonapat, Haryana, but the petitioner could not be apprehended as he was not found residing at his home address for the last one year.

3. The petitioner's case in the present writ petition now is that he had by a legal notice dated 1st February, 2002 sought voluntary retirement from service. His further case is that since the said request had not been considered by the Central Government within the stipulated period of three months in terms of the proviso to Rule 19(2) of the BSF Rules, he must be deemed to have retired from Government service w.e.f. 1st August, 2002. A declaration to that effect has been prayed for by the petitioner apart from a mandamus directing the respondents to sanction the pensionary benefits due to him.

4. The respondents have filed a counter affidavit in which the circumstances leading to his absence from duty have been set out in detail. It is also stated by the respondents that efforts to apprehend the petitioner have failed on account of his being found missing from the place where he was supposed to be residing. In para 7 of the counter affidavit, it is further stated that the request for voluntary retirement of the petitioner was not accepted because a case regarding over-staying of authorised leave was pending against him. It is alleged that the refusal of the authority to accept the resignation letter was communicated to the petitioner well before the expiry of notice period stating inter alia that the request could be considered/processed only after finalization of the disciplinary case pending against the petitioner.

5. We have heard learned Counsel for the parties and perused the record. It was argued on behalf of the petitioner that submission of a letter seeking permission to resign from the force shall/was deemed to be accepted by the Central Govt. unless it was rejected within a period of three months as envisaged by proviso to Rule 19(2) of BSF Rules. Since the petitioner's request had not been considered and rejected within the said period, contended the learned Counsel, the same must be deemed to have been accepted thereby bringing about a cessation of relationship of employee and employer between the parties and entitling the petitioner to claim all retiral benefits otherwise due to a person who superannuates from service. We regret our inability to accept that line of reasoning. Rule 19 of the BSF Rules upon which the petitioner places reliance reads as under:

19. Resignation.-(1) The Central Government may, having regard to the special circumstances of any case, permit any officer of the Force to resign from the Force before the attainment of the age of retirement or before putting in such number of years of service as may be necessary under the rules to be eligible for retirement:

Provided that while granting such permission the Central Government may:

a) require the officer to refund to the Government such amount as would constitute the cost of training given to that officer; or

b) make such reduction in the pension or other retirement benefits of the officer if so eligible as that Government may consider to be just and proper in the circumstances.

(2) The Central Government may accept the resignation under Sub-rule (1) with effect from such date as it may consider expedient:

Provided that it shall not be later than three months from the date of receipt of such resignation.

6. It is evident from a bare perusal of the above that there is no automatic cessation of employee-employer relationship between a member of the Force and the Government by submission of a letter of resignation. The Central Government have, on a plain reading of the provision, the discretion to accept or reject a letter of resignation. Rule 19 does not either expressly or by implication provide that permission to resign from service may be deemed to have been granted upon expiry of a period of three months from the date the letter of resignation is received. The proviso to the Rule upon which learned Counsel for the petitioner places reliance no doubt requires the Government to take a decision within a period of three months from the date of receipt of the resignation letter but the same does not go further to say that in case such a decision is not taken within the said period, the resignation shall be deemed to have been accepted. It does not create the fiction of a deemed acceptance of the resignation or a deemed grant of permission to resign from service. That is, in our opinion, evident even from the scheme of the Act and the Rules according to which the Government may looking to the exigencies of service and the special circumstances attendant upon a given case decline to let an officer go out of the Force. We Therefore have no hesitation in rejecting the contention urged on behalf of the petitioner that he had ceased to be a member of the Force just because the period of three months had expired from the date the letter seeking permission to resign was first submitted.

7. Even assuming that proviso to Rule 19(2) could be interpreted, to create a fiction of a deemed acceptance the respondents have on affidavit stated that there was a rejection of the petitioner's request within the period of three months stipulated in the Rule. We see no reason to reject that assertion of the respondents on a question of fact. We see no reason to reject that assertion of the respondents on a question of fact. On either count, Therefore, the first limb of the petitioner's case that he stood discharged from service based on his resignation must fail and is turned down.

8. Learned Counsel for the petitioner next argued that in terms of Rule 48A of CCS Pension Rules, a Government employee could issue a notice of voluntary retirement which if not accepted within the period specified in the notice would result in making his retirement effective from the date specified. Rule 48A of CCS Pension Rules reads as under:

48-A. Retirement on completion of 20 years" qualifying service

(1) At any time after a Government servant has completed twenty years" qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

XXXXX

XXXXX

XXXXX

(2) The notice of voluntary retirement given under Sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

9. We fail to understand how the petitioner can take any help from above provision. We say so for two reasons. Firstly because service conditions of the petitioner including his entitlement to quit the Force are regulated by the BSF Service Rules which make a specific provision in the form of Rule 19 referred to above. There is in the light of that special provision no question of borrowing support from Rule 48A of the CCS Pension Rules for determining whether a member of the Force can retire at his will upon expiry of the period stipulated in the notice of retirement.

10. Secondly, because a comparison between the provisions of Rule 19 of the BSF Rules and Rule 48A of CCS Pension Rules shows that wherever the rule making authority intends to make the request for retirement or resignation effective even in the absence of acceptance by the competent authority, it makes a provision to that effect as in the case of Rule 48A(2) of CCS Pension Rules. Rule 19 of the BSF Rules however does not make any such provision. It does not provide for a deemed acceptance of the request for retirement as in the case of Rule 48A(2).

11. There is no merit in this petition which fails and is hereby dismissed with costs assessed at Rs. 1000/-.

12. At this stage, learned Counsel for the petitioner submitted that the petitioner may be allowed to join his unit. Mr. Duggal counsel for the respondent submits that the respondents would have no objection to his joining the unit in which event the respondents would take appropriate disciplinary action against him in accordance with law. We, Therefore, make it clear that the dismissal of this petition would not prevent the petitioner from joining his unit nor shall it prevent the respondent from taking such disciplinary action against him as may be otherwise permissible in law.

13. No costs.