
(2004) 11 GAU CK 0013
In the Gauhati High Court
Case No : C.R. No. 115 of 1995

Ranu Sinha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 17
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2005) 1 GLT 205

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : C.S. Sinha, for the Appellant; K. Bhattacharjee, for the Respondent

Judgement

B.K. Sharma, J.—By this writ application the Petitioner has made a challenge to the Order dated 20.10.87 by which the resignation tendered by the Petitioner was accepted w.e.f. 31.10.87. The Petitioner has also made a challenge to the communication dated 27.09.87 by which he was ordered to send back his wife to home from the working place.

2. The Petitioner joined his service as constable on 14.11.74. In 1977, while on duty he met with an accident and received injury on his waist. In absence of Army hospital, the Petitioner got his treatment from a Civil Doctor but could not recover from his injury up to the mark.

3. On 20.12.86 the Medical Officer of the Unit Hospital of 33 Bn., CRPF referred the Petitioner to Bone and Joint Hospital, Kashmir. Certain examination were carried out and a suggestion was made for operation of bone L4 and L5. Accordingly the Petitioner was sent to Base Hospital No. 1 Jarda Kala, New Delhi. For the purpose of such operation the Petitioner wanted to have his family member present but the Hospital authority turned down the request so made by the Petitioner.

4. Instead of undergoing treatment as was suggested by the Hospital authority,

the Petitioner proceeded on two months leave w.e.f. 26.06.87 to 25.08.87 and came to Tripura, his home State. Because of illness the Petitioner could not return to join the Unit and overstayed his leave for another 28 days. By a communication dated 06.09.87 the competent authority of the Unit advised the Petitioner to join his duty immediately under threat of legal action. On receipt of the said communication, the Petitioner rushed to his duty place. He also took his wife along with him which according to the Respondents was impermissible. As such the Respondents by their communication dated 27.09.87 directed the Petitioner to send back his wife, which according to the Petitioner was not possible due to paucity of time. The communication dated 16.09.87 was preceded by another communication dated 16.06.87 by which the Petitioner was directed to explain the circumstances under which he had refused to undergo the treatment and as to why his service would not be terminated. The Petitioner submitted his reply on 17.06.87 reiterating his stand in one of his earlier representation dated 25.03.87 expressing his reluctance to undergo the operation. By the said representation the Petitioner also made a request to the Respondents to allow him to leave the service on medical ground, if so advised by the Medical Board entitling him the pensionary benefits etc.

5. When the matter rested thus and the Petitioner failed to send back his wife, the impugned office memorandum dated 20.10.87 was issued by the Commandant of 33 Bn., CRPF accepting the resignation tendered by the Petitioner w.e.f. 31.10.87 as per his own request under the provision of Rule 17 of the CRPF Rules, 1955.

6. It is the case of the Petitioner that he was forced to sign some typed papers and the same was done in the office on 20.11.87. Immediately after the said incident the Petitioner was handed over with the office Order dated 20.10.87 purportedly accepting his resignation from service w.e.f. 31.10.87. According to the Petitioner such purported acceptance of his resignation w.e.f. 31.10.87 by the impugned order dated 20.10.87 rendered the entire period of service of the Petitioner (about 14 years) infructuous disentitling him from any service benefits which the Petitioner would have earned by offering for voluntarily retirement.

7. The aforesaid impugned orders dated 27.09.87 and 20.10.87 have been put to challenge by filing the instant writ petition in 1995, i.e. after about 8 years. However, the delay has been sought to be explained in the following manner.

After service of notice on the Respondents towards redressal of grievance by the Petitioner, he approached the Court by filing a Title Suit Vide No. 53/87 in the Court of the learned Munsiff, Kailasahar, North Tripura District on 14.12.88 challenging the Order dated 20.10.87. The suit was disposed of by Order dated 21.12.88 holding that the Court of Munsiff had no jurisdiction to entertain the suit. Against the said Order, the Petitioner preferred a Civil Misc. Appeal No. 1/89 before the District Judge, North Tripura and the same was also rejected by order dated 20.02.91. Thereafter the Petitioner wanted to approach the Central Administrative Tribunal (CAT), Guwahati Branch as per the liberty granted by the District Judge in his order dated 20.02.91 passed in Civil Misc. Appeal No. 1/89.

However, he could not collect money for the purpose and eventually as per the advice of his learned Counsel he could come to know that the Tribunal had no jurisdiction in such matter and he in fact, was required to approach the High Court by filing the instant writ petition. After such advice of the learned Counsel he initiated the writ proceeding by filing the instant writ petition in 1995.

8. The Respondents have filed their affidavit in opposition denying the contentions raised in the writ petition. According to the Respondents the allegations made by the Petitioner are all baseless. The resignation tendered by the Petitioner was accepted by the impugned order dated 20.10.87 as per the provision of Rule 17 of the CRPF Rules, 1955. The Respondents have stated in their affidavit that the Petitioner resigned from his service as per his own volition. There was no pressure mounted on him by the Respondents as alleged by the Petitioner. The plea of the Petitioner that he was forced to sign some typed papers has been denied.

9. The Respondents have also filed an additional counter after an amendment was brought to the writ petition. In fact, the allegations relating to the alleged calling of the Petitioner to the office of the Respondents No. 3 and forcing him to sign some typed papers and acceptance of the purported resignation by the Petitioner on that basis were not there in the original writ petition but were brought subsequently by bringing an amendment to the writ petition by way of incorporating paragraphs 10(A), 10(B) and 10(C). The additional counter was filed only in respect of those amendments. The allegations made by bringing the amendment to the writ petition have been denied by the Respondents in their counter affidavit. In paragraph 6 of the counter affidavit it is the specific stand of the Respondents that on 19.10.87 the Petitioner was produced before the Respondent No. 3 where he was explained the consequence of his resignation and that it would be better for him not to submit his resignation. According to the Respondents such a state of affairs was verified from the report of the Commandant dated 17.08.88. Other allegations made by the Petitioner have all been denied.

10. In the affidavit in opposition filed by the Respondents the copies of the letter of resignation have been annexed as Annexure R(1) and R(2). Annexure R(1) is a letter (undated) addressed to the Commandant by the Petitioner praying for discharge from service on account of domestic problems. Annexure R(2) is a letter dated 07.10.87 reiterating the stand made in the first letter of resignation and making a request for discharge from service at an early date.

11. I have heard Mr. C.S. Sinha, learned Counsel for the Petitioner and Mr. S. Bhattacharyya learned Sr. C.G.S.C. for the Respondents. Referring to the sequence of events consequent upon refusal of the Petitioner to undergo medical treatment and taking his wife along with him while reporting for duty after overstaying leave for 28 days, Mr. Sinha submitted that the entire action on the part of the Respondents was mala fide and founded on colourable exercise of power. He submitted that the Petitioner never tendered any resignation from

service and thus, there was no question of acceptance of the same. According to him the Annexures R(1) and R(2) letters purportedly submitted by the Petitioner are the one typed out by the Respondents forcing the Petitioner to put his signature on them.

12. Mr. S. Bhattacharjee on the other hand, submitted that the writ petition is liable to be dismissed on the ground of delay and laches in approaching the writ Court. He submitted that the matter relating to 1987 could not have agitated in 1995 after long 8 years. On merit, he submitted that it was a case of simple resignation and acceptance thereof. However, the Petitioner later on became wise and made out certain story to suit his purpose. He submitted that the plea of the Petitioner regarding forcing him to put his signature on some typed papers being based on disputed question of fact, the writ Court cannot ascertain the same in exercise of power of judicial review.

13. I have considered the rival submissions made by the learned Counsel for the parties and have perused the materials on record. The cause of action had arisen in October, 1987 and the Petitioner invoked the writ jurisdiction of this Court after long 8 years. In between he was pursuing his remedy in wrong forum firstly by instituting a Title Suit in the Court of learned Munsiff and thereafter by preferring an appeal against his order before the learned District Judge who in turn rejected the appeal in 1991. However, there is no adequate explanation relating to the delay in approaching this Court in 1995 after waiting for long 4 years from 1991. Thus, the plea of the Respondents and the argument advanced by Mr. Bhattacharjee, learned Sr. CGSC regarding delay in invoking the jurisdiction cannot be brushed aside. After long 8 years of passing of the impugned order dated 20.10.87 when the writ petition was filed in 1995 and about 17 years till date, I am of the considered opinion that the delay in approaching this Court will certainly play a vital role towards redressal of the grievance of the Petitioner, if any. In spite of such a position, the case of the Petitioner has been examined on merit.

14. It is the case of the Petitioner that he was forced to sign some typed papers by the officers of the Respondents. Initially at the time of filing of the writ petition such a plea was not taken in the writ petition. However, subsequently an amendment was brought to the writ petition by way of incorporating paragraphs 10(A), 10(B) and 10(C) wherein for the first time statements were made that on 20.11.87 the Petitioner was called to the Chamber of the Respondent No. 3 and he forced the Petitioner to sign some typed papers and later on the impugned order dated 20.10.87 purportedly accepting the resignation tendered by the Petitioner was handed over to him. It is in this context, the Respondents in their additional counter affidavit have questioned the bonafide on the part of the Petitioner in raising such a plea by bringing an amendment to the writ petition which, if correct, was so vital to the case of the Petitioner which could not have escaped from the original pleadings in the writ petition.

15. In the notice u/s 80 CPC annexed to the writ petition the plea now raised by

way of bringing the aforesaid amendment to the writ petition is also not to be found. Only statement in the notice was that the Petitioner was pressurized and compelled to submit resignation letter which he accordingly did. Further statement made in the notice was that he was under true belief that he would be entitled to the gratuity and other benefits like any other Armed Force personnel who are discharged from service on medical ground.

16. I have also gone through the plaint in Title Suit No. 53/88. In the plaint also unlike the statement made by bringing amendment to the writ petition, no such statement relating to the plea of obtaining the signature of the Petitioner on some typed papers could be found. The plea raised in the plaint was that he submitted the resignation on being pressurized by the Respondent No. 3. Further plea raised in the plaint was that a prayer was made on 24.10.87 to the Respondent No. 3 that the Petitioner had submitted the letter of resignation out of fear and mistake and the letter of discharge, i.e. the impugned order dated 20.10.87, should be withdrawn. However, the same was not acceded to. From the aforesaid narration of the fact it is seen that different stories have been made by the Petitioner to suit his purpose.

17. In the notice u/s 80 CPC as well as the suit before the Munsiff the plea of the Petitioner was that he had submitted the letter of resignation on being pressurized by the Respondent No. 3 and that he wanted to withdraw the same by submitting the letter dated 24.10.87. No copy of the letter dated 24.10.87 has been annexed to the writ petition. Same was also not annexed to the plaint. During the course of argument also the copy of the said letter could not be produced. On the other hand, altogether a new plea has been raised in the writ petition and that too by way of bringing an amendment to the effect that the Petitioner was forced to sign some typed papers by the Respondents. No such plea was raised either in the 80 CPC notice or in the plaint. Thus, the story which is now sought to be made out by the Petitioner in the writ petition is not acceptable and believable. Moreover, the plea of the Petitioner that he was forced to sign some typed papers by the Respondent No. 3 requires adjudication of the matter on disputed question of fact which the writ Court is not empowered, more particularly in absence of any supporting materials and on the face of the inherent contradiction in respect of same very plea raised by the Petitioner in two different forums.

18. There is another aspect of the matter. Had it been the intention of the Respondent No. 3 towards quick acceptance of resignation tendered by the Petitioner, he would not have given time limit of 10 days. By the impugned order dated 20.10.87, the resignation tendered by the Petitioner was accepted w.e.f. 31.10.87. Thus, the acceptance of resignation was with prospective effect. The Respondents in their additional counter affidavit have rather stated that the Petitioner was advised on 19.10.87 to withdraw the resignation tendered by him. This specific plea of the Respondents have not been denied by the Petitioner.

19. In view of the above, the plea of the Petitioner that he had submitted his

letter of resignation under compulsion and not out of his own volition is not acceptance. Similarly, the plea of the Petitioner that he in fact, did not tender any resignation and that he was forced to sign some typed papers by the Respondent No. 3 and later on the same were made use of as letters of resignation towards issuance of the impugned order dated 20.10.87 is also not acceptable. The other impugned order dated 27.09.87 by which the Petitioner was directed to send back his wife as it was not permissible to keep one's wife in the Army Unit, is of no consequence after issuance of the impugned order dated 20.10.87.

20. With the acceptance of resignation tendered by the Petitioner, he is not entitled to any service benefits. It was in that context the Petitioner has pleaded that he was under bonafide expectation that after the impugned order dated 20.10.87 he would be conferred with the service benefits as is applicable to other Army personnel discharged from service on medical ground. It is on record that the Petitioner sustained some injury while on duty and he was sought to be operated upon. However, same did not materialise. May be some fault is attributable to the Petitioner. However, having regard to long length of service (about 14 years) if the Petitioner was entitled to any service benefits on acceptance of his prayer for discharge from service on medical ground which he had made by Annexure I representation dated 25.03.87, the same may be considered by the Respondents.

21. It will be expedient for the Respondents to reconsider the case of the Petitioner as to whether the impugned order dated 20.10.87 could be converted to be one as discharge of the Petitioner from service with medical ground which will entitle the Petitioner to certain service benefits. It is expected of the Respondents that they would take a sympathetic approach in the matter and pass appropriate order in accordance with law. Although no Mandamus has been issued to the Respondents directing them to act in a particular manner towards redressal at least a part of the grievance of the Petitioner by way of converting the resignation from service to that of discharge of the Petitioner from service on medical ground entitling him certain service benefits. It is the expectation of the Court that the Respondents will take a pragmatic approach to the matter unmindful of the observations made above towards rejecting the claim of the Petitioner. The entire exercise shall be carried out by the Respondents within a period of three months from the date of furnishing the certified copy of this judgment and order. Whatever may be the result of such consideration, be it acceptance of the case of the Petitioner to be the one of discharge from service on medical ground or maintaining the impugned order dated 20.10.87, the Petitioner shall be communicated with the results thereof.

22. While not interfering with the impugned order dated 20.10.87, the writ petition is disposed of with the above observations leaving it to the Respondents to reconsider the case of the Petitioner in the light of the observations made above.

23. The writ petition stands disposed of. There shall be no order as to costs.