
(2016) 11 DEL CK 0147
In the Delhi High Court
Case No : W.P.(C) No. 6995 of 2016

Sachin Balhara

APPELLANT

Vs

GNCT Delhi

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 236 DLT 9

Hon'ble Judges : Mr. Sanjiv Khanna and Ms. Sunita Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Anupam Srivastava, ASC for GNCTD with Ms. Shanmistha Ghose, Advocate, for the Respondent Nos. 1 and 2; Mr. Ajay Raj Singh and Mr. Shabbir Ali, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Sunita Gupta, J. - The writ petitioner impugns the order dated 29.04.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi whereby the OA No.2951/2014 filed by the petitioner was dismissed.

2. The petitioner joined the services as constable on 04.04.2002 in Delhi Police on compassionate ground on account of death of his father, late Shri Hari Krishan Balhara, who was also working in Delhi Police. On 14.05.2013, he tendered his resignation which was duly accepted by the competent authority on 09.07.2013 w.e.f. 16.07.2013. He was granted "no due certificate" on 15.07.2015. He was discharged. Nearly five months thereafter, the petitioner had second thought and moved the application dated 10.12.2013 for rejoining the duty, which was considered by the competent authority and rejected vide rejection letter dated 18.02.2014. Aggrieved by the dismissal of OA No. 2951/2014, the present writ petition has been filed seeking following reliefs:

a. Issue a writ of certiorari setting aside the impugned judgment dated 29.04.2016 passed by Central Administrative Tribunal, Principal Bench, New

Delhi in OA No. 2951/2014 titled as Sachin Balhara v. GNCTD & Anr.

b. Issue writ of mandamus directing the respondent no.2 to pass an appropriate order for re-joining the petitioner in Delhi Police Department and setting aside the acceptance order dated 18.02.2014 passed by the respondent no.2.

3. The petitioner has sought his reinstatement in Delhi Police and for setting aside the acceptance order, inter alia, on the ground that:-

(i) Due to family circumstances, he was constrained to submit resignation letter as his real uncle was harassing him and his mother and earlier his father also on the issue of immovable property and had tried to dispossess them. After the death of his father, various complaints were made by the petitioner. The mother of the petitioner also filed a civil suit for immovable property in November, 2013. Even after the petitioner joined the Delhi Police, his uncle continued giving him threats either to deliver the immovable property else he will make false and frivolous complaints against him to the Commissioner of Police. The petitioner was under enormous mental pressure and harassment due to these threats. The mother of the petitioner was suffering from hypertension and the two elder brothers of the petitioner were living separately. Therefore, the petitioner was the only caretaker of his ill mother. As such he submitted his resignation letter dated 14.05.2013. Due to financial constraints, the petitioner had sent an application on 10.12.2013 for joining back his services to the competent authority which was rejected vide rejection letter dated 18.02.2014.

(ii) The resignation procedure was invalid in view of Section 25(5) of the Delhi Police Act as the petitioner had availed a loan of Rs.1,80,000/- on the basis of an application forwarded by his department against his departmental salary account. A sum of Rs.24,000/- was still pending against the same.

(iii) The acceptance of resignation letter was not communicated to the petitioner as the acceptance letter bears forged signatures of the petitioner.

(iv) As per Section 25(8) of the Delhi Police Act, 1978 and Rule 31 of Delhi Police (Punishment & Appeal) Rules, 1980 issuance of a discharge certificate by the competent authority was prerequisite for completion of resignation process. However, the petitioner has not been issued a discharge certificate till date.

(v) The MACP Scheme was granted to the petitioner vide order dated 28.02.2013 with effect from 05.04.2012. The GPF of 12 years of service of the petitioner has not been released till date. Thus, the resignation process was invalid.

4. Having heard learned counsel for the petitioner, we do not find any ground to interfere with the impugned order passed by the Central Administrative Tribunal in view of the discussions made hereinafter.

5. Sub Section 5 and 7 of Section 25 of Delhi Police Act, 1978 on which reliance has been placed by the petitioner is of no avail to him. For the sake of convenience, these Sub Sections are reproduced as under:-

"(5) No police officer of subordinate rank whose resignation has been accepted by the appointing authority shall be permitted to withdraw from duty until he has fully discharged all debts, due from him, as such police officer to Government or to any police fund and has surrendered his certificate of appointment, arms, accoutrements, uniform and all other Government property in his possession and has also rendered a complete account of all Government money and property for which he is responsible.

(7) If any such police officer of subordinate rank resigns or withdraws himself from the duties of his office in contravention of this section, he shall be liable on the orders of the appointing authority to forfeit all arrears of pay then due to him in addition to the penalty to which he may be liable under section 22 or any other law for the time being in force."

6. Sub-section (5) mandates that no police officer of subordinate rank whose resignation has been accepted by the appointing authority shall be permitted to withdraw from duty until he has fully discharged all debts, due from him, as such police officer to the Government or to any police fund. This provision would not come to the aid of the petitioner for the reason that as per the "no dues certificate", there was no debt due from the petitioner which had been availed by him from the Government or Police fund. The loan amount of Rs.1,80,000/- availed by the petitioner was a personal loan taken by him while in service. The mere fact that the instalments were deducted from his salary account does not mean that this was a debt due from the petitioner to the government or in police fund.

That being so, Sub-Section 5 of Section 25 has no applicability. Moreover, the provision is for the benefit of the respondents as an employer and secures them. It ensures that the debt dues etc. are paid. This would not nullify the resignation or its acceptance.

7. Sub-section (7) of Section 25 states that if any such police officer of subordinate rank resigns or withdraws himself from the duties of his office the appointing authority can forfeit all arrears of pay due to him in addition to the penalty which may be imposed under section 22 or any other law for the time being in force. A plain reading of Section 25 (5) and (7) would reveal that no police officer of subordinate rank is permitted to withdraw from his duty until he has fully discharged all debts, due from him to them or to any police fund. He has surrendered his certificate of appointment, arms, uniform etc. Consequences for such failure are stipulated. Although Rule 31 of Delhi Police Rules requires issuance of discharge certificate in Form A Part I which prescribes general information such as rank / Constable number, name and parentage, full permanent and present residential address, the date of birth, age on the date of dismissal / removal / resignation, educational qualifications, etc., almost all the information are contained in "no due certificate" dated 15.07.2013 issued by the competent authority which is substantial compliance of Rule 31 of Delhi Police Rules. Moreover, these are merely procedural practise which does not create any

substantial right in the employee to undo acceptance of resignation. Resignation once accepted, has the effect of cessation and ends the employer and employee relationship. The petitioner had submitted his resignation and had option to withdraw his request till acceptance, but not afterwards. The petitioner cannot seek restoration of employment merely because he wants to rejoin. The employment of the petitioner was governed by Rules, and requires consent and approval of the Delhi Police. There are sequel of judgments wherein the Supreme Court has time and again held that once the resignation is accepted by the competent authority and becomes effective then it cannot be withdrawn by the employee concerned. In *Union of India and Ors. v. Gopal Chandra Misra and Ors.*, AIR 1978 SC 694 the matter came up for consideration before the Constitutional Bench and it was held that-

45. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing chooses to resign from a future date, the act resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal.

8. Again in *Modern School v. Shashi Pal Sharma and ors.* (2007) 10 SCR 76, the Supreme Court has held:-

17. Once the resignation of the First Respondent had validly been accepted, the question which would arise for consideration is as to whether the same could be done before 17.06.1997. It is not a case where acceptance of the resignation was made effective from a future date. Resignation of the First Respondent having been accepted, only he was to be relieved from 17.06.1997. We have noticed hereinbefore the purport of Section 114A of the Act, in terms whereof resignation was to be accepted within a period of 30 days. In view of the aforementioned statutory provision, in our opinion, only because the First

Respondent was to be relieved with effect from 17.06.1997 the same would not mean that even thereafter it was open to the First Respondent to withdraw his resignation. In fact, if the aforementioned letter dated 18.03.1997 is excluded from consideration, he had not withdrawn his resignation at all.

9. The petitioner, in the instant case, submitted his resignation on 14.05.2013 which was duly accepted by the competent authority on 09.07.2013 with effect from 16.07.2013. He was relieved from his duty from 16.07.2013 onwards. The request for rejoining service made by the petitioner on 10.12.2013, i.e., after the expiry of 90 days from the date of resignation as such was rightly rejected by the competent authority in view of rule 26(ii) & (iii) of CCS (Pension) Rules, 1972.

10. As regards the submission that there was no communication or acceptance order which was condition precedent for a valid resignation, this plea is again devoid of any merits. In *Raj Kumar v. Union of India*, AIR 1969 SC 180, the Supreme Court held that resignation becomes effective as soon as it was accepted by authority and no communication is required. Therefore, communication of the acceptance may not be a prerequisite for valid resignation. In the present case, the petitioner had not reported for duty with effect from 16.07.2013 onwards. Obviously he was aware that his resignation had been accepted. In fact, the acceptance communication was sent, and the stand of the petitioner is that his signatures on this communication are forged. The petitioner's conduct belies and negates the plea.

11. As regards the family circumstances set up by the petitioner which compelled him to submit the resignation letter, a perusal of resignation letter submitted by the petitioner reveals that no such case was set up by him while submitting the resignation. For the sake of convenience, the contents of the resignation letter are reproduced as under:

"Respected sir,

It is submitted that I was appointed in the department on 04.04.2002 as a constable (exe). Presently

I am posted in south east district, Special Staff. I am resigning from the department for my personal good reasons therefore my application may be considered at earliest.

It is requested that my 2 months notice period may be counted from the day of application.

I'll be very grateful to you for this kind of act.

Thanking you."

12. Pursuant thereto, the competent authority accepted the resignation vide impugned order dated 09.07.2013 which reads as under:

"In accordance with provision of Rule 25(2) of Delhi Police Act, 1978, the

resignation tendered by Constable (Exe.) Sachin Balhara, No.3435/SE (PIS No.28020004) is hereby accepted at his own request w.e.f. 16.07.2013. He was enlisted in Delhi Police on 04.04.2002 (A/N).

He should deposit all the Govt. belongings in his possession including uniform articles, Appointment Card, Identity card (Delhi Police), CGHS Card etc before leaving the department and clear all other dues. He will make his final departure entry in the Daily Diary of Duty Officer / South East District. He will also furnish "No Dues Certificate" before his departure from Delhi Police.

He is not in possession of Govt. accommodation."

13. A perusal of the aforesaid letter reflects that neither strained relation with his uncle nor illness of his mother were made the ground for submitting resignation nor any conditional request was made in his letter of resignation. He had simply resigned for his "personal good reasons". The purported reasons now set up would not invalidate his resignation letter. Under the circumstances, the resignation letter submitted by the petitioner and duly accepted by the competent authority with effect from 16.07.2013 on 09.07.2013 cannot be permitted to be unilaterally withdrawn thereby allowing the petitioner to rejoin the duty.

14. In case, the petitioner is entitled for any revised arrears of pay along with increments or GPF, the petitioner is at liberty to take recourse in accordance with law, but for that reason he cannot be heard to say that once the resignation submitted by him was duly accepted by the competent authority now it should be allowed to be withdrawn. These amounts are payable post cessation of the employer and employee relationship, these would not per se negate or nullify the acceptance of resignation.

15. In view of the foregoing discussion, we do not find any reason to interfere with the impugned order dated 29.04.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi. The writ petition is accordingly dismissed.

16. There shall be no orders as to costs.