

GAHC010006222016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/196/2016

RANGAN KR. NATH



VERSUS

THE UNION OF INDIA and 2 ORS
REP. BY THE SECY., GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS,



2:THE DIRECTOR GENERAL
THE CENTRAL RESERVE POLICE FORCE



3:THE DY. INSPECTOR GENERAL OF POLICE
GROUP CENTER
CENTRAL RESERVE POLICE FORCE



Advocate for the Petitioner : MR.R GOGOI, MS.B GOGOI,MR.PARAG J SAIKIA

Advocate for the Respondent : C.G.C., MR.G PEGU(R-1 - 3),ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 27-08-2024

Heard Mr. P.J. Saikia, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned CGC for all the respondents.

2. Aggrieved by the order dated –02/2012 issued by the Deputy Inspector General, Group Centre, CRPF, whereby, the resignation of the petitioner has been accepted w.e.f. 04.08.2012, the petitioner has filed this present petition. The petitioner has prayed for a direction to respondent authorities to constitute a Medical board for examination of his disease and then allow to go on retirement on medical ground since he has already completed the required qualifying service.

3. Brief facts of the case giving rise to filing of the writ petition are that the petitioner was inducted as Constable GD in the CRPF on 06.08.2000. In the month of August, 2008 while he was posted at Guwahati, due to sudden severe backbone pain he had to be admitted into hospital at Guwahati for treatment and was diagnosed from 'Low Backacne'.

4. It is the contention of the petitioner that due to frustration owing to prevailing circumstances and because of his ill health, he had prayed for constitution of Medical board to examine his illness as early as possible, otherwise his resignation may be accepted vide his letter dated 27.07.2012 as he has already diagnosed with P3(P) disease, which is incurable.

5. It is contended that the respondent authorities without constituting the Medical board has recommended his letter of resignation for acceptance. Accordingly, the petitioner was discharged from his service by accepting his resignation w.e.f. 04.08.2012 for which he would not be entitled for retirement benefit, including pension although the petitioner has completed the required qualifying service for entitlement of all the retirement benefits.

6. Mr. P.J. Saikia, learned counsel for the petitioner submits that the petitioner has submitted a letter addressing to the Deputy Inspector General, Group Centre, CRPF, Guwahati, for constitution of Medical Board otherwise to accept his resignation due to his ill health and other family problem. The said letter clearly reflects that the resignation sought is a conditional one, as he has requested for production of the petitioner before Medical board for medical examination otherwise, his resignation may be accepted. He submits that the respondent authority has not constituted any Medical Board for examination of the petitioner. Had the respondent authority constituted the Medical board as requested by the petitioner vide his letter dated 27.07.2012, he could have been discharged from the service on medical ground, which would have entitled him invalid pension in terms of the Rules.

7. Mr. P.J. Saikia, learned counsel while referring to the additional affidavit filed by the respondents submits that it appears that on 18.05.2012, a Medical board was constituted for Departmental Rehabilitation Board of the Force personnel. However, the same was never intimated to the petitioner. Had such constitution of Medical board been intimated, the petitioner would have appeared and he would have been properly examined by the Board. Therefore, he submits that the mechanical acceptance of the resignation letter, which is conditional, is not sustainable. As such, he prayed that the impugned order of acceptance of the resignation dated ---02/2012 w.e.f. 04.08.2012 may be set aside.

8. Learned counsel for the petitioner has relied upon the judgment in the case of ***William R. Shimary –vs- The State of Manipur and Ors*** reported in ***1996 (3) GLT 216*** to project that the letter of resignation must be unambiguous, unequivocal and not conditional. The conditional resignation

cannot be accepted without first informing the employee that the condition cannot be accepted. Relying on the above judgment, Mr. P.J. Saikia, learned counsel, submits that the acceptance of conditional resignation without first constituting the Board or informing the petitioner is not sustainable.

9. Per-contra, Mr. G. Pegu, learned CGC appearing for all the respondents, submits that the respondent authority has constituted a Medical board. After examination by the Medical board, the petitioner was placed under P3(P) as it is necessary to constitute Medical board to assess any employee keeping his gravity of the disease. He submits that although the case of the petitioner was referred to Inspector General of Police, NES, Shillong for Departmental Rehabilitation Board, before finalisation of the case, the petitioner has submitted an application seeking resignation from the service due to domestic problem, which was accepted by the competent authority w.e.f. 04.08.2012, therefore, the petitioner cannot turn around and say that acceptance of his resignation is bad and as such, the petitioner deserves no relief.

10. Mr. G. Pegu, learned CGC submits that apart from the submission of resignation, which was accepted by the respondent authority, since the petitioner had only completed 12 (twelve) years 2 (two) months of service at the time of resignation, is not entitled for pension as envisaged under Rule 26(1) of Central Civil Pension Rules, 1972 as he did not complete the qualifying service of 20 years in the Force.

11. Mr. G. Pegu, learned CGC has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***BSES Yamuna Power Ltd. –vs- Sh. Ghanshyam Chand Sharma & Anr.*** reported in ***2020 3 SCC 346*** to project that where an employee has resigned from service, there arises no question of whether he has infact voluntarily retired or resigned. Decision to resign is

materially distinct from a decision to seek voluntary retirement. Decision to resign results in legal consequences that flow from a resignation under applicable provision.

12. In the above case, the Hon'ble Supreme Court has held that by resigning, the employee submitted himself to the legal consequences that flow from a resignation under provision applicable to his service and the issue of whether the employee has served 20 years, the question is of no legal consequence. Even if the employee had served 20 years, Under Rule 26 of CCS Pension Rules, his past service stands forfeited after resignation.

13. Due consideration has been extended to submissions advanced by the learned counsel for the parties.

14. The petitioner was appointed in the CRPF as Constable GD on 06.08.2000. Admittedly, the petitioner was diagnosed with disease and placed under P3(P). On 27.07.2012, the petitioner has submitted a letter titled as Regarding Resignation from Service. The letter relied upon by the petitioner reflects that he has requested for production before the Medical board for medical examination as early as possible, otherwise his resignation may kindly be accepted. The letter of resignation relied by the respondents which is in handwritten dated 27.07.2012 is different one which is shown that since the petitioner is not in a position to look after the family and due to medical category under P(3) P, he is compelled to resign from the post.

15. On perusal of both the letters relied upon by the parties there is a difference in the said resignation letters. It appears that the petitioner has retyped his resignation letter by way of improvement as the original letter titled as Regarding Resignation from Service submitted to the respondent authority is

in hand-written, with a different sentence and meaning.

16. Be that as it may, without going into the genuineness or otherwise of the said two letters, this Court is of the view that the petitioner has submitted his resignation letter voluntarily as it appears that he was suffering from the disease and placed under P-3(P) and was not able to look after his family including his old aged father and children.

17. It is noticed that the respondent authority has constituted Departmental Rehabilitation Board for 7 (seven) Force personnel including the petitioner. The petitioner was examined and placed under P3(P) and referred to the concerned authority for Departmental Rehabilitation Board. Though, learned counsel for the petitioner has strenuously argued that such constitution of the Board has not been intimated to the petitioner, however, the record indicates that the petitioner was examined, of course before submission of his resignation letter dated 27.07.2012.

18. Bare perusal of the resignation letter dated 27.07.2012 relied by the petitioner, though it has mentioned for constitution of Board for medical examination, goes to that an option has been given that his resignation be accepted otherwise.

19. The handwritten letter dated 27.07.2012 submitted by the petitioner annexed by the respondent authorities appears to be original one as it shows that he has submitted the resignation letter as he is suffering from P3(P) diseases and is not able to look after his family, , therefore, he is compelled to resign from the service.

20. It is also noticed that the petitioner submitted an undertaking certificate which certifies that the petitioner has been explained in details about the

hardship which he is facing in uncertain and difficult economic age after discharge and he has proceeded on discharge from service on his own due to domestic problem.

21. Having considered the 2 (two) resignation letters relied upon by the parties, I find that there is no scope to hold that the letters are either ambiguous or conditional. Thus, I am of the view that there is no illegality in accepting the resignation of the petitioner w.e.f. 04.08.2012 by the respondent authority. There cannot be any disagreement to the proposition of law that the letter of resignation must be unambiguous. The resignation can be accepted only when it is clear, unambiguous, unequivocal and not conditional. If a letter of resignation is coupled with condition, same cannot be accepted by the authority without first informing the employee that the condition put forth by him cannot be accepted.

22. In the present case, on bare perusal of the resignation letter dated 27.07.2012, submitted by the petitioner, the letter, apart from being clear and unambiguous, cannot be held to be a conditional one. Therefore, this Court is of the view that the judgment relied upon by the learned counsel for the petitioner is not applicable in the facts of the present case.

23. It is needless to observed that Rule 26 of CCS Pension Rules, 1972 provides that upon resignation, an employee forfeits past service. Since, the petitioner has not taken the plea of such issue in the present case, considering the specific grievance raised by the petitioner is with regard to resignation and its acceptance only, the issue of applicability of Rule 26 of CCS Pension Rules, 1972 need not be gone into.

24. In view of the discussion made hereinabove, I am of the view that no

case has been made out for interference to the impugned acceptance of resignation of the petitioner and his discharge from service. Thus, I find no merit in this petition.

25. Accordingly, the writ petition stands dismissed and disposed of. No order as to costs.

JUDGE

Comparing Assistant