

GAHC010144722021



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

Case No. : WP(C)/4703/2021

EX. FORCE NO.025090537 CONSTABLE/COOK MAJARUL ALI
S/O LATE ABDUL ROB, AGE ABOUT 42 YEARS, R/O VILL. CHIRAKHUNDI,
P.O. AND P.S. RANGIA, DIST. KAMRUP (R), ASSAM, PIN 781354

VERSUS

THE UNION OF INDIA AND 4 ORS.
REPRESENTED BY THE SECY. MINISTRY OF HOME AFFAIRS, NEW DELHI
110003

2:THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE
CENTRAL GOVT. OFFICE COMPLEX
NEW DELHI 110001

3:THE INSPECTOR GENERAL OF POLICE
NORTH EASTERN SECTOR CENTRAL RESERVE POLICE FORCE
SHILLONG
MEGHALAYA
PIN 793001

4:THE PRINCIPAL CUM DEPUTY INSPECTOR GENERAL OF POLICE
REGIONAL TRAINING CENTRE
CENTRAL RESERVE POLICE FORCE
RAJGIR
NALANDA
BIHAR
PIN

5:THE DY. INSPECTOR GENERAL OF POLICE
CENTRAL RESERVE POLICE FORCE
GROUP CENTRE

AMEIGOG
GUWAHATI
PIN 78102

Advocate for the Petitioner : MR. R MAZUMDAR

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 25-01-2024

Heard Mr. R. Mazumder, learned counsel for the writ petitioner. Also heard Ms. R. Devi, learned CGC appearing for the respondents.

2. Assailing the order dated 16-04-2021, by means of which, the representation submitted by the petitioner for allowing him to join back in service was rejected, the writ petitioner has approached this Court for the second time, by filing the instant writ petition.

3. The facts of the case, in a nutshell, are that the petitioner was initially appointed as a Constable/ Cook under the Central Reserve Police Force (CRPF), in which post he had joined in the year 2002. While serving as a Cook, on 22-12-2017 the petitioner had submitted an application seeking 'discharge' from service by citing personal reasons after rendering 16 years of continuous service. Taking note of the request made by the petitioner, his application was accepted on the same day vide order dated 22-12-2017. Later on, the petitioner wanted to join back in service and therefore, he had submitted application dated 10-01-2018 requesting the authorities to reinstate him in service. On

13-04-2018, the said application submitted by the petitioner was allowed and he was asked to join back. The case of the petitioner is that pursuant to the order dated 13-04-2018, he had reported for duty on 02-05-2018 but the petitioner was not allowed to join.

4. The department has contested the claim of the petitioner by contending that pursuant to the order dated 13-04-2018, he had never reported for duty. Be that as it may, being aggrieved by the alleged refusal on the part of the department to allow him to join back in service, the writ petitioner had earlier approached this Court by filing W.P.(C) No. 8893/2018. After taking note of the stand of both the sides in W.P.(C) No. 8893/2018, the learned Single Judge was of the view that whether or not the petitioner had reported for duty or was he unduly prevented from joining back by the respondents, was a disputed question of fact. Therefore, by the order dated 10-02-2021, the learned Single Judge had disposed of the said writ petition with the following observations and directions:-

“After considering the rival submissions, this Court is of the view that questions of fact which are disputed in nature would be involved in this writ petition and therefore, it may not be proper for this Court to enter into the merits of such disputed questions of fact which may require adducing evidence. Therefore, without expressing any opinion on the inter-se merits of the parties, the writ petition is disposed of by granting liberty to the petitioner to submit a representation for his re-engagement as a Constable/Cook in the respondent-Force. In the event such representation is filed, the same be considered within a period of 45 days from the date of receipt of the same. It is clarified that such consideration would be without prejudice to the earlier rejection order dated 17.09.2018 and would be on the merits of the representation.”

5. Pursuant to the order dated 10-02-2021 passed by this Court, the petitioner had submitted a representation ventilating his grievance in the matter. The said representation

was, however, rejected by the concerned authority by the impugned order dated 16-04-2021, thus declining his prayer for reinstatement in service by holding that the representation was devoid of any merit. Assailing the order dated 16-04-2021, the present writ petition has been filed.

6. Questioning the legality and validity of the order dated 16-04-2021, Mr. Mazumder, learned counsel for the writ petitioner has addressed elaborate arguments. By referring to the provision of Rule 17 of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as the "Rules of 1955") as well as the "Recruiting Roll" in the schedule of Rules, Mr. Mazumder submits that since the petitioner had submitted his application on 22-12-2017 seeking voluntary discharge from service and in view of the fact that the said application was allowed on the same day, i.e. 22-12-2017 without observing the three months notice period as mandated by the Rules, the order dated 22-12-2017 is illegal, inasmuch as the request for discharge made by the petitioner could not have been accepted by the authorities on the same day in violation of the Rules.

7. It is also the submission of Mr. Mazumder that while disposing of the representation submitted by the petitioner by the impugned order dated 16-04-2021, the authorities have failed to appreciate the circumstances narrated by the petitioner under which, he had originally submitted the application for discharge nor did they consider the fact that pursuant to the order dated 13-04-2018, the petitioner was entitled to join back in service. Mr. Mazumder has, however, admitted, in his usual fairness, that earlier also the petitioner had remained absent from duty on several occasions and wanted discharge, as a result of which, the authorities have held him to be unfit to continue in a disciplined

force such as the CRPF.

8. Contesting the said arguments, Ms. R. Devi, learned CGC has argued that the petitioner is a habitual offender, inasmuch as on numerous occasions in the past, he had made attempts first to tender his resignation and thereafter, make a request for reinstatement, as a result of which, the authorities have taken a firm stand in the matter. Contending that the impugned order dated 16-04-2021 has been issued strictly in accordance with the observation made in the order passed by this Court as well as by following the provisions of Rules of 1955, the learned CGC has prayed for dismissal of the writ petition.

9. I have considered the submission made by the learned counsel for both the sides and have carefully gone through the materials available on record. From a reading of the impugned order dated 16-04-2021, I find that the authorities have not only elaborately dealt with the background facts as well the contentions advanced by the petitioner but have also recorded proper reasons for arriving at the conclusion to the effect that his representation was devoid of any merit. This Court is of the opinion that there is no illegality or perversity in the findings and conclusions recorded in the order dated 16-04-2021.

10. I also find that it is the admitted position of fact that earlier also, the petitioner had requested the authorities to relieve him from duty and later on, made a request to allow him to join back in service. Under the circumstances, if the authorities are of the view that the petitioner is not fit to be retained in a disciplined force such as the CRPF, this Court does not find any fault with such an opinion of the respondents. As such, the

challenge made in the order dated 16-04-2021 is found to be devoid of any merit and the same is accordingly rejected.

11. Coming to the other issue raised by the petitioner's counsel as to whether it is a case of discharge or resignation from service, it is to be noted herein that the Rules of 1955 does not envisage "Voluntary Retirement". However, under Rule 17 of the Rules, there is scope for discharge from service, inasmuch as any employee after completing the requisite years of service can apply for voluntary discharge from service through proper channel. In case of resignation from service, the same can be acted upon either by accepting the same forthwith or at the end of three months notice period.

12. Referring to Rule 16 of the Rules of 1955, Mr. Mazumder has argued that not only proper counselling but also three months notice period is mandatory for accepting resignation. In support of his above arguments, Mr. Mazumder has relied upon the decision of this Court in the case of **Biswarup Mukherjee Vs. UoI & Ors.** reported in **2017 (3) GLT 251**. Interpreting Rule 16 of the Rules of 1955, this Court had made the following observations in paragraph 5 of **Biswarup Mukherjee (Supra)**, which are reproduced here-in-below:-

"5. Under Rule 16 of the CRPF Rules, discharge on three months' notice for quasi permanent constable is permitted but the appointing authority is obliged to permit resignation, only for good and sufficient reason, under Sub-Rule (d) of Rule 16. The discharge of CRPF constable is made subject to the Schedule appended to the CRPF Act, which also mandates a notice period for acceptance of resignation from CRPF personnel. That apart, before resignation is accepted, the authority under the applicable Guideline of 17.5.1990, must explain in detail about the likely hardship, the constable will face after his discharge and an undertaking about the counseling must be retained in the Battalion record."

13. Relying on the said decision, Mr. Mazumder has argued that resignation tendered by an employee under the CRPF cannot be accepted unless the same is preceded by counselling. Mr. Mazumder submits that there was no counselling before accepting the application dated 22-12-2017 submitted by the petitioner and therefore, in view of the law laid down in ***Biswarup Mukherjee (Supra)*** the said application cannot be treated as resignation but an application for voluntary discharge.

14. A plain reading of the application dated 22-12-2017 submitted by the petitioner clearly goes to show that he had applied for 'discharge' from service and the word 'discharge' has also been mentioned both in 'English' as well as in 'Hindi' alphabets in the application. There is no mention of 'resignation' in the said application. Resignation of an employee comes under Rule 16 of the Rules of 1955 whereas, discharge from service comes under Rule 17.

15. In the order dated 22-12-2017, the authority has mentioned about discharge of the petitioner but has he also added the expression 'resignation' although it appears that the petitioner had never intended to resign but was seeking his discharge. Therefore, this Court is of the opinion that the impugned order dated 22-12-2017 cannot be treated as a letter of 'resignation' from service but it would have to be treated as an order of voluntary 'discharge' from service within the meaning of Rules 17 of the Rules of 1955.

16. Rule 17 of the Rules of 1955 deals with discharge from service which is reproduced here-in-below:-

“17.Discharge. - Subject to the provisions of the Schedule appended to the Act, any member of the Force shall at any time before he has completed three

months' service or after the completion of the full period of service for which he is engaged, be entitled to claim his discharge from the Force by applying to his appointing authority through the proper channel."

17. A reading of the Rule clearly goes to show that the same does not specifically deal with resignation. Moreover, in the order dated 22-12-2017 which was issued as per Rule 17, the respondents have also used the expressions 'discharge' and 'resignation'. However, in view of the provisions of Rule 17, the application dated 27-12-2017 submitted by the petitioner could not have been treated as request both for his discharge and also resignation from service as the process for discharge and resignation as per the scheme of the Rules of 1955 appear to be distinct and different having varying implications under the Rules. Since the word resignation is not mentioned in the application dated 22-12-2017, this Court is of the opinion that the request of the petitioner to relieve him from service ought to have been treated as a request for voluntary discharge and not resignation. Therefore, the order dated 22-12-2017, will have to be treated as one of 'discharge' from service within the meaning of Rule 17 of the Rules of 1955. As such, subject to fulfilling the requirements of the Rules of 1955 in case of an employee discharged from service under Rule 17, the petitioner would be entitled to consequential benefits as may be admissible under the Rules.

18. Since there is no prayer in this writ petition to grant any relief in the form of consequential service benefits, no such relief can be granted by this Court to the petitioner in this case. However, the said aspect of the matter is left open for future consideration, as and when the occasion arises. The petitioner is accordingly, granted liberty to approach the competent authority by making appropriate application on that

behalf. If such an application is made by the petitioner, the same be considered in the light of the observations made hereinabove as well as the provisions of relevant Rules and the grievance of the petitioner be redressed in accordance with law, as expeditiously as possible but not later than 03 months from the date of receipt of a certified copy of this order. A certified copy of this order, along with the application, if any, be submitted before the competent authority for doing the needful within 04 (four) weeks from today, if so advised.

With the above observation, this writ petition stands disposed of.

There would be no order as to cost.

JUDGE

GS

Comparing Assistant