



2026:000:109244

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 14385 of 2007

850824165 Ex.Lnk Gd Ganesh Das Ram Chandra

.....Petitioner(s)

Versus

State of U.P. and Others

.....Respondent(s)

Counsel for Petitioner(s)	: Havaladar Verma, S.N. Pandey
Counsel for Respondent(s)	: A.S.G.I., Arun Kumar Pal, Rajeshwar Singh

Court No. - 34

(Sl.No.269)

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Ashok Kumar Dwivedi, Advocate holding brief of Sri Havaladar Verma, learned counsel for the petitioner and Sri Arun Kumar Pal, learned counsel for the respondents.

2. The instant petition has been filed by the petitioner seeking quashing of the order dated 09.06.2006 whereby the representations of the petitioner were rejected by the respondent and also commanding the respondent to take a decision in the light of the judgment of Division Bench of this Court in **Dinesh Chandra Gupta vs. Union of India, (1998) 3 UPLBEC 2305**.

3. Learned counsel for the petitioner submits that the petitioner was appointed as Constable in 93rd Battalion, CRPF in the year 1997 and as such was continuing in service. Thereafter, in the years 1999 and 2000, after the wife of the petitioner delivered a child, she suffered serious ailments of tuberculosis. In such circumstances, according to the petitioner, he asked the commandant concerned to grant him leave so that he can take care of his wife and newborn child. The Commandant instead of granting leave to the petitioner, forced him to resign as a precondition to grant him leave. Under such compelling circumstances, on 6.12.2000, the petitioner had to resign from the service. Thereafter, the petitioner was granted leave from 23.12.2000 till 30.12.2000 and the petitioner went to

his home, got his wife admitted in the hospital and thereafter reported back on 31.12.2000. On 16.01.2001, the said resignation of the petitioner was accepted by the commandant w.e.f. 25.01.2001.

4. However, the case of the petitioner herein is that on 17.01.2001, the petitioner had moved an application to withdraw his resignation and thereafter on 22.01.2001, personal interview/discussion was held with the petitioner by the Commandant and again on 31.01.2001, the petitioner had moved another application requesting the respondent to set aside the order dated 16.01.2001 and allow the petitioner to continue in service till the attainment of his age of superannuation. However, the petitioner continued to request the respondent no.3 to permit him to join but the respondent did not permit him to join. He again moved a representation on 18.03.2005 and 14.05.2005. Thereafter, when no action was taken by the respondent and the petitioner was not permitted to join, he filed Writ Petition No. 17372 of 2006, which was disposed of vide order dated 29.03.2006 directing the respondent no.3 to dispose of the claim of the petitioner as expeditiously as possible within three months from the date of production of certified copy of the order in the light of the judgment of Division Bench in ***Dinesh Chandra Gupta (supra)***. Thereafter, vide order dated 09.06.2006, the respondent no.3 rejected the claim of the petitioner rejecting all the representations submitted by the petitioner. Being aggrieved, the petitioner herein again moved an application dated 17.09.2006 before the respondent no.3 seeking review of the order dated 09.06.2006 in the light of the judgment of Division Bench in ***Dinesh Chandra Gupta (supra)***. Since no action was taken by the respondent, the instant petition has been filed by the petitioner.

5. Learned counsel for the petitioner further relying upon the judgment of Co-ordinate Bench of this court in ***Dinesh Chandra Gupta (supra)*** submits that the Division Bench of this Court has categorically considered the provisions of Section 6 of the Act and Rules 16 and 17 of the CRPF Rules and the Division Bench has categorically held that the Rules do not contemplate resignation by a member of the force after he has been given substantive status in the force but the second proviso of the Recruitment Rules embodied in the schedule of the Act empowers the Commandant to allow, if he thinks fit a member of the force to resign at any time, on such

member giving three months' notice of his wish to do so.

6. Relying upon the aforesaid judgment, learned counsel for the petitioner submits that the Commandant could not have accepted the resignation prior to three months notice period is over and before the notice period is over, the petitioner has already applied for withdrawing his resignation. In such circumstances, it was not open to the respondents to accept the resignation. In such circumstances, learned counsel for the petitioner submits that the order dated 16.01.2001 does not sustain in law and is liable to be set aside. Consequently, the further orders whereby the representations of the petitioners have been rejected, are also liable to be quashed.

7. Per contra, learned counsel for the respondent has placed reliance upon the office memorandum dated 11.02.1988 and submits that once the resignation is accepted, it is not open to be withdrawn. Even according to the petitioner, the first application for withdrawing the resignation was submitted by him on 17.01.2001 after the resignation was accepted on 16.01.2001. Though the receipt of the said letter has been disputed by the respondent thus learned counsel for the respondent submits that there is no illegality in the order dated 16.01.2001 whereby the resignation was accepted and consequently there is no illegality in the impugned order whereby the representations of the petitioner have been rejected.

8. Having heard the rival submission so made by learned counsel for the parties, this Court has carefully gone through the record of the case. The Division Bench of this Court has categorically dealt with the relevant Rules in this regard in ***Dinesh Chandra Gupta (supra)*** in the following manner.

"(6.) Lastly, the learned counsel for the appellant canvassed that the order of discharge of appellant was not in accordance with the provisions of the Central Reserve Police Force Act, 1949 those of the Central Reserve Police Force Rules, 1955. In order to appreciate the contention advanced by the learned counsel appearing for the appellant, we may advert to the relevant provisions embodied in the Act and the Rules made there under. Section 6 of the Act postulates that no member of the Force shall be at liberty to (a) resign his appointment during the term of his

engagement except before the expiration of the first three months of the service: or (b) withdraw himself from/or of any of the duties of his appointment without the previous permission in writing of the Commandant or Asstt. Commandant or any other officer authorised by the Commandant to grant such permission. Rules 16 and 17 of the Rules too being germane, are abstracted below:

"16. Period of Service.--(a) All members of the Force shall be enrolled for a period of three years. During this period of engagement, they shall be liable to discharge at any time on one month's notice by the appointing authority. At the end of this period those not given substantive status shall be considered for quasi-permanency under the provision of the Central Civil Services (Temporary Service) Rules, 1965. Those not declared quasi-permanent under the said rules shall be continued as temporary Government employees unless they claim discharge as per Schedule to the Act. Those who are temporary shall be liable to discharge on one month's notice and those who are quasi-permanent shall be liable to discharge on three months' notice in accordance with the said rules, as amended from time to time. (b) Should the Central Government decide at any time to disband the Force or any part of it either before termination of the period for which a member of the Force is enrolled or at any time thereafter, he shall be liable to discharge, without compensation from the date of disbandment. (c) No member of the Force shall withdraw from the duties of his office without the express permission of the Commandant or an accredited gazetted officer. (d) The appointing authority may, during the period of initial appointment of a member of the Force appointed under Section 4 of the Act, permit him, for good and sufficient reason, to resign from the Force with effect from such date as may be specified in the order accepting his resignation; Provided that on the acceptance of his resignation any such member of the Force shall be required to refund to the Government all the cost of training imparted to him in the Force or a sum equal to three months' pay and allowances, received by him prior to the date of his resignation whichever is less. Explanation.--(1) For the purpose of this sub-clause "during the period of Initial appointment shall mean the period before a member of the Force is declared quasi-permanent. (2) The appointing authority may refuse to permit a member

of the Force to resign if any emergency has been declared in the country either due to internal disturbances or external aggression. (3) The appointing authority may give substantive status to such members of the Force as are found suitable in all respects.

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."

(8.) A conjoint reading of Section 6 of the Act, Rules 16 and 17 of the Rules and the Schedule to the Act makes it abundantly clear that 'discharge' and 'resignation' are treated differently. All members of the Force are enrolled for a period of three years and during this period of engagement, they are liable to discharge at any time on one month's notice by appointing authority at the end of the Initial period of enrolment. Those not given substantive status are to be considered for quasi-permanency under the provisions of Central Civil Services (Temporary) Rules, 1965 and those not declared quasi-permanent under the said Rules, shall be treated as temporary Government employees unless they claim discharge as per Schedule to the Act. Those who are temporary shall be liable to discharge on one month's notice and those who are quasi-permanent shall be liable to discharge on three months' notice in accordance with the said Rules as amended from time to time. A member of Force can claim his discharge from the Force as of right by applying to his appointing authority through the proper channel 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.

(9.) But according to 'Recruiting Roll' contained in the Schedule to the Act and Rule 16 (d) of the Rules, no member of the Force has the liberty to resign his appointment except before the expiration of the first three months of his service. The appointing authority has indubitably been given discretion to permit a member of service, "for good and sufficient reason", to resign, "during the period of initial appointment" from the Force with effect from such date as may be specified in the order accepting resignation. The discretion of the appointing authority is not

unrestrained by fetters. There must be good and sufficient/cogent reason for accepting the resignation during the period of initial appointment and the appointing authority may refuse to permit a member of the Force to resign if any emergency has been declared in the country either due to internal disturbances or external aggression. The expression "during the period of initial appointment", connotes the period before a member of the Force is declared quasi-permanent. The Rules do not contemplate resignation by a member of the Force after he has been given substantive status in the Force but the second proviso to the 'Recruiting Roll' embodied in the Schedule to the Act, empowers the Commandant to allow, "if he thinks fit" a member of the Force to resign "at any time" on such member giving three months' notice of his wish to do so. There is no provision enabling the Commandant to waive the notice period. In the instant case, the appellant was inducted for the post of constable in the C.R.P.F, and was enlisted on the Recruiting Roll in the year 1985 on final agreement in the prescribed form and was accordingly appointed constable which duty he joined on 27.6.1985. Admittedly, at the time of his discharge, the appellant was harnessed on active duty in Amritsar. In case, the appellant had demitted the service during the Initial period of his appointment, the appointing authority could have permitted the appellant for "good and sufficient reason" to resign from the Force. The appellant was enlisted in service way-back in 1985 and from his affidavit dated 23.8.93, a photocopy of which has been annexed to the supplementary counter-affidavit dated 19th September. 1997 and which was admittedly received in the office of the Commandant on 19.10.93, it appears to us that the appellant had acquired 'substantive status' in the Force. Since the appellant had acquired "substantive status" in the Force, the question of resigning as of right from Force would not arise. The Commandant could, of course, have permitted the appellant to resign from the Force if he thought it fit to allow the appellant to resign on his giving three months' notice of his desire to do so, as comprehended by the second proviso to the Schedule. The order of discharge purports to have been issued under Rule 17 of the Rules though it is termed as resignation. Related provisions contained in the Act, the Schedule and the Rules do not shore up the order of discharge as such and the resignation could not have been accepted by the appointing authority except on proper self-

direction to the conditions stipulated in Rule 16 (d) of the Rules and/or those of the second proviso to the Schedule appended to the Act. The order of discharge per se does not connote that the Commandant/Appointing authority adverted itself to the relevant provisions discussed above and then accepted the application moved by the petitioner-appellant seeking voluntary discharge from service. The expression "if he thinks fit" used in this second proviso is significant. While permitting a member of the Force who has acquired substantive status in the Force, to resign, the Commandant has to keep in mind the interest of the Force as well as the gravity of the circumstances in which the resignation is given coupled with the fact if acceptance of the resignation in such circumstances, would be unfair and unjust to the concerned member of the Force. A reasonable balance between the two needs to be struck by the Commandant. Before permitting a substantive member of the Force to resign, the appointing authority must address himself to all the aspects relevant to the matter which in the Instant case does not seem to have been done by the appointing authority and the resignation was accepted in a perfunctory manner and the representation filed by the petitioner seeking reinstatement in service, came to be rejected by the Commandant vide order dated 25.2.94 as "being devoid of merit". The learned single Judge in our opinion, was not right in holding that no Justifiable ground had been made out for intervention by this Court."

9. The relevant part of office memo dated 11.02.1988 as relied upon by the respondent reads as under:-

"3. A resignation becomes effective when it is accepted and the Government servant is relieved of his duties. If a Government servant who had submitted a resignation, sends an intimation in writing to the appointing authority withdrawing his earlier letter of resignation before its acceptance by the appointing authority, the resignation will be deemed to have been automatically withdrawn and there is no question of accepting the resignation. In case, however, the resignation had been accepted by the appointing authority and the Government servant is to be relieved from a future date, if any request for withdrawing the resignation is made by the Government servant before he is actually relieved of his

duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. If, however, the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the appointing authority and suitably intimated to the Government servant concerned.

5. The procedure for Withdrawal of resignation after it has become had effective and the charge of The procedure for withdrawal of resignation come effective and the Government servant had relinquished the charge of his earlier post, are governed by the following statutory provisions in sub-rules (4) to (6) of Rule 26 of the CCS (Pension) Rules, 1972 which corresponds to Art. 418(b) of the Civil Service Regulations:-

(4) The appointing authority pointing Authority may permit a person to withdraw his resignation in the public interest on the following condition namely-

(i) that the resignation was tendered by the Government servant for some compelling reasons that the resignation which did not involve any reflection on his integrity, efficiency or conduct and the request of a material change in the circumstances which originally compelled him to tender the resignation:

(ii) that during the period intervening between the date on which the resignation become effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper,

(iii) the period of absence from duty between the date on which the resignation becomes effective and the date on which the person is allowed to resume duty a result of permission to withdraw the resignation is not more than ninety days:

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a

person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count. as qualifying service."

10. Clause 3 of the office memorandum makes it clear that the resignation becomes effective when it is accepted and the government servant is relieved of his duties. Clause-5 of the office memorandum deals with the withdrawal of resignation, which relies upon the sub-rules (4) to (6) of Rule 26 of the CCS (Pension) Rules, 1972, which corresponds to Article 418 (b) of Civil Service Regulations. Clause-3 of the said Regulation permits that the resignation can be withdrawn from the date when it became effective till the period of 90 days. Thus, from the aforesaid office memorandum, it is clear that though the resignation becomes effective when it is accepted and in the instant case, the resignation has been accepted on 16th January, however the same has been made effective on 25.01.2001. It is an admitted position that on 22.01.2001, the petitioner was called for an interview/discussion on the issue of resignation.

11. Though the respondents have denied the receipt of the application dated 17th January 2001 submitted by the petitioner withdrawing the resignation, however from the fact that on 22nd January 2001 he was called for an interview on the same subject after accepting the resignation. Thus had there been no application for withdrawal on the part of the petitioner, there was no occasion for the respondent to call him for interview/discussion.

12. In such view the matter, immediately after the order of his resignation was accepted, the petitioner moved for its withdrawal before the said resignation became effective on 25.01.2001 and clause-5 of the office memorandum categorically permits that the said resignation can be withdrawn even within 90 days from the date when the resignation becomes effective. In such circumstances, considering the overall circumstances as has already been noted herein above that the petitioner was compelled by the respondent to resign as he wanted to take leave to take care of his wife, who was seriously ill and before the resignation became effective, the petitioner had already moved a representation before the respondent to withdraw his resignation, for which he was also

called for interview on 22.01.2001 and thus his resignation ought to have been withdrawn. As from the scheme of the Act, the resignation of the person of a permanent status in the disciplined force is an exception, not a rule and this ought to have been accepted only in the exceptional circumstances, not as a general rule, as has already been laid down by the Division Bench of this Court in ***Dinesh Chandra Gupta (supra)***.

13. In such view of the matter, this Court is of the considered view that the respondents ought to have permitted the petitioner to withdraw the resignation by setting aside the order dated 16.01.2001 passed by the Commandant.

14. As of now it has been submitted by the learned counsel for the petitioner that the petitioner is aged about 62 years. Thus, he has already attained the age of superannuation.

15. In such circumstances, this Court cannot pass any order for reinstatement of the petitioner at this stage. However, the order dated 16.01.2001 as well as the impugned order dated 09.06.2006 are hereby **quashed**.

16. Since the respondents have illegally acted in not permitting the petitioner to withdraw the resignation, in such circumstances, had the petitioner been permitted, the petitioner would have worked satisfactorily till he attains the age of superannuation. In such view the matter, the instant petition is **disposed of** with the direction to the respondents to pay 50% of the back wages to the petitioner w.e.f. 25.01.2001 till he attained the age of superannuation with all consequential benefits such as pensionary and other retiral benefits available to the petitioner. The aforesaid payment shall be made to the petitioner by the respondents within a period of three months from today.

(Anish Kumar Gupta,J.)

May 12, 2026

Ashish Pd.