

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4512 OF 2016

Rohit s/o Dnyaneshwar Tajane

-vs-

Union of India, through the Secretary, Ministry of Home Affairs and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.R.S.Khobragade, counsel for the petitioner.
Mr.Ambarish Joshi, AGP for the respondent Nos.1 to 3.

CORAM : SMT. VASANTI A NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 02.12.2016.

By this writ petition, the petitioner seeks a declaration that the order passed by the Assistant Commandant accepting the resignation of the petitioner is bad-in-law. The petitioner seeks a declaration that the petitioner is entitled to remain in service, on the post of head constable under the respondent No.3, the Commandant of Headquarter, 9th N.D.R.F. Battalion.

The petitioner was appointed as a head constable in Border Security Force on 23/11/2011. The petitioner completed his training and was posted at 9th Battalion, N.D.R.F. in Patna (Bihar) on 21/11/2012. The petitioner tendered a resignation to the competent authority as he was not able to cope up with his service in Border Security Force and he wanted to pay proper attention to his family, being the only son to his old and ailing parents. The resignation tendered by the petitioner on 21/11/2012 was accepted by the Assistant Commandant on 21/12/2012 and the petitioner's resignation was to take effect on 30/12/2012. On 19/10/2013, the petitioner requested the Commandant for withdrawal of the resignation that came into effect on 30/12/2012. However, the respondents did not permit to withdraw and hence, the petitioner has filed the instant petition challenging the order of acceptance of his resignation on

21/12/2012. The petitioner has also sought a declaration that the petitioner continues in the service as a head constable in the Border Security Force.

According to the petitioner, the resignation of the petitioner could not have been accepted by the Assistant Commandant, as according to rule 19 (4) of the Border Security Force Rules, 1969, the resignation of the petitioner, could have been accepted only by a Commandant, as the petitioner was an enrolled person. It is submitted that the acceptance of the resignation of the petitioner is bad-in-law and in the circumstances of the case, the respondents ought to have permitted the petitioner to withdraw the resignation, as his father was operated upon and was well when he decided to withdraw the resignation.

We find that the petitioner has belatedly approached this court with a challenge against the order accepting the resignation. The resignation was accepted on 21/12/2012 and the writ petition is filed on 30/06/2016. The representations/communications of the petitioner were answered by the respondents, lastly on 30/09/2014 and the writ petition is filed nearly two years after the said date. The petitioner had worked only for about one year as head a constable and had tendered the resignation during his period of probation on the ground that he was not able to cope up with the service in the Border Security Force and he wanted to take care of his old parents, being their only son. The resignation of the petitioner was accepted within one month and the petitioner took nearly a year to request the respondents to seek the withdrawal of the resignation that was accepted on 21/12/2012 though the resignation could have been withdrawn within 90 days. As a member of the disciplined force, the petitioner should not have decided within a year of joining the services to resign, solely on the ground that he was not able to cope up with the services in the Border Security Force. We do not find any illegality in the Assistant Commandant accepting the resignation of the petitioner, as the order is passed by the Assistant Commandant for the Commandant and some other orders clearly show that the Commandant had applied his mind

before accepting the resignation of the petitioner. We find that the petitioner has worked only for one year during the probation period as a head constable and his resignation is accepted before four years. In the circumstances of the case, a declaration cannot be granted that the petitioner continues to work as a head constable in the Border Security Force.

Since we do not find any reason for granting the prayers made in the writ petition, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

KHUNTE