

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.2720 of 2015
Date of Decision:29.08.2016**

Suresh Kumar

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Sandeep Thakan, Advocate for the petitioner.

Mr. Piyush Khanna, Advocate for UOI.

P.B. BAJANTHRI J.

The petitioner has assailed the order dated Nil.5.2014 (Annexure P-1). The petitioner was appointed as a constable in the year 1991. Due to domestic problem, he submitted an application for voluntarily retirement on 12.4.2014. The voluntarily retirement application/request was accepted in the month of May 2014 and it was made clear that such acceptance would be given effect with effect from 1.8.2014. In the meanwhile, on 22.7.2014, the petitioner is stated to have withdrawn the application for voluntarily retirement dated 12.4.2014.

Learned counsel for the petitioner submitted that there is a provision for withdrawal of voluntarily retirement application. Therefore, the petitioner had submitted an application for withdrawal on 22.7.2014 i.e. before the date of giving effect to the acceptance of voluntarily retirement on 1.8.2014. Hence, the Competent Authority should have accepted the withdrawal from voluntarily retirement and permitted the petitioner to continue in service. Thus, the impugned action is arbitrary.

Per contra, learned counsel for the respondents submitted that

after receipt of the withdrawal application dated 22.7.2014, petitioner has been heard in person and his domestic grievance has been taken into consideration. Whereas, following observation has been made vide Annexure P-4 dated 12.11.2014:

“His previous records it is found that he is very indiscipline and habitual for taking liquor almost daily on duty and awarded punishment for this at many occasions. Hence his request for retaining him in the service considered and rejected.”

Learned counsel for the respondents further submitted that on 23.5.2014 itself the application for voluntarily retirement has been accepted, therefore, the petitioner has not made out a case so as to interfere with the order dated 1.8.2014 relating to acceptance of voluntarily retirement dated 1.8.2014. Even Appellate Authority considered the grievance of the petitioner and it was turned down with reference to the past misconduct.

Heard learned counsel for the parties.

Case in hand relates to two issues viz., (i) Whether withdrawal of the application dated 22.7.2014 is within the time limit or not?

(ii) While rejecting the withdrawal application, the Competent Authority has taken note of the previous record stating that the petitioner is very indiscipline and habitual for taking liquor and he has been punished on many occasions is in accordance with law or not?

First issue is concerned, petitioner has submitted withdrawal of voluntarily retirement application on 22.7.2014 before acceptance of voluntarily retirement to be given effect with effect from 1.8.2014. No doubt acceptance of the voluntarily retirement is dated 23.5.2015. However, withdrawal of the application is prior to giving effect to the acceptance of the voluntarily retirement i.e. 1.8.2014, therefore, the Competent Authority

should have appreciated the fact that before order of accepting voluntarily retirement is given effect, the petitioner had submitted application for withdrawal for voluntarily retirement. Hence, competent authority should have appreciated and permitted the petitioner to withdraw voluntarily retirement application and permitted to continue in service.

Insofar as the second issue is concerned, the Competent Authority/Appellate Authority is prejudiced while rejecting withdrawal application for voluntarily retirement on the score that he was biased with reference to the previous record of the petitioner. The petitioner was not subjected to disciplinary proceedings so as to reject withdrawal application for voluntarily retirement based on the past record of the petitioner. Therefore, the impugned communication dated nil.5.2014 (Annexure P-1) is set aside. The respondents are directed to take back the petitioner within a period of three months from today and petitioner is entitled to only notional benefits. The petitioner is not entitled for arrears of salary for the intervening period from the date of relieving till reinstatement into service.

The petition stands allowed in part.

29.08.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**