

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.1964 OF 2020

Sandip s/o Prakash Thorat,  
Age-34 years, Occu-Nil,  
R/o Khandala, Tq.Vaijapur,  
Dist.Aurangabad

– PETITIONER

VERSUS

1. The Union of India,  
Through its Secretary,  
Ministry of Home Affairs,  
New Delhi
2. The Commandant (Pers-II),  
Force Hqrs SSB, New Delhi,
3. The Inspector General  
Sashastra Seema Bal,  
Force Headquarters,  
R.K.Puram, New Delhi,
4. The Commandant,  
52<sup>nd</sup> Bn SSB, Araria,  
Dist.Araria (Bihar)
5. The Staff Officer,  
(Administration), Frontier  
Hqrs SSB, Patna
6. The Staff Officer,  
(Administration), Sector Hqrs,  
SSB, Purnea.

– RESPONDENTS

Mr.N.R.Thorat, Advocate for the petitioner.  
Mr.S.N.Patale, Standing Counsel for respondent Nos. 1 to 6.

( CORAM : RAVINDRA V. GHUGE &  
S.G. MEHARE, JJ)

DATE : SEPTEMBER 14, 2021

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clauses 15-B and 15-C as under :-

*15-B] Kindly issue writ of certiorari or any other writ or direction in the like nature, kindly quash and set aside order dated 13-01-2020 passed by the Commandant 52<sup>nd</sup> Bn SSB, Araria in proceeding No.1/Estt-III/52nd Bn./CRC/PF/S.P.T./2017-18/808-10 and consequently reinstate in service to the petitioner as a CT (GD).*

*15-C] Kindly be declared and hold that, the petitioner is entitled for the reinstatement in service as per the guidelines DoP & TOM No.28035/2/2014-Estt (A) dated 10.06.2019.”*

3. The petitioner was appointed as a “Constable Guard” in the Indian Army on 01/03/2007. He was inducted in the 52<sup>nd</sup> battalion

SSB, Araria. The petitioner has 3 sisters and is the only son to his parents. His parents are old and suffering from age related issues. He tendered his resignation in his own handwriting on 16/07/2019, which was accepted on 25/07/2019. He was relieved on the same date. He submitted an application on 06/09/2019 withdrawing his resignation as per the guidelines dated 10/06/2019 and prayed for reinstatement in service. By communication dated 13/01/2020, the Commandant, Sashastra Seema Bal, 52<sup>nd</sup> Battalion, Araria, refused to allow the application dated 09/10/2019 (which was received by his office) and declined to accept his request for reinstatement.

4. The petitioner contends that he had first submitted an application on 29/08/2019 for reinstatement. We do not find any evidence that the said application has reached the Commandant. The petitioner submits that he posted another application dated 09/10/2019 in which the reference to an earlier request dated 06/09/2019 has been made in paragraph No.2. It is this application, that was considered vide the impugned order and was not accepted.

5. The petitioner has relied upon the office memorandum dated

10/06/2019 issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. According to him, his case is covered by Clause 2 of the said memorandum, which would facilitate his reinstatement in service within 90 days.

6. Clause 2 of the office memorandum reads as under :-

*“2. The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely ;*

*[a] that the resignation was tendered by the Government Servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation.*

*[b] that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;*

*[c] that the period of absence from duty between the date on which the*

*resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;*

*[d] that the post, which was vacated by the Government Servant on the acceptance of his resignation or any other comparable post, is available.”*

7. The learned Advocate for the respondents has relied upon the affidavit in reply dated 20/06/2021 filed by Virendra Kumar Verma, Commandant 52<sup>nd</sup> Battalion. While supporting the impugned order, he submits that firstly, a reinstatement could be possible only in public interest. No such public interest is involved in this case. Secondly, the petitioner had submitted his resignation letters even earlier on 23/06/2016, 16/12/2017, 26/03/2018 and finally on 06/07/2019. He also tendered a reminder on 18/07/2019.

8. He then draws our attention to an incident that had occurred on 14/07/2015 when the petitioner was performing Sentry Duty at RP Gate of SHQ SSB Tezpur when he fired one round from his personal weapon 5.56 mm INSAS Rifle Butt No.26, Body No.18002353. The

bullet hit him in his right thigh. Disciplinary proceedings were initiated against him and he was punished with 14 days pay fine from the pay of January 2017 u/s 56(1)(g) of S.S.B.Act 2007 vide order dated 03/01/2017. So also, during the trial in the said case, he had left the campus of SHQ SSB Tezpur on 17/03/2018, unauthorizedly. After conducting disciplinary proceedings and taking into account his statement that as leave was not granted to him to attend to his ailing mother, he had absconded, was awarded 28 days RI in Force custody u/s 56(1)(a) of S.S.B. Act, 2007 by order dated 03/12/2016. In yet 2 other instances when he made false allegations against the DC of 65th Battalion, SSB Camp at Bagaha and as the charges were proved, he was awarded the punishment of 21 days confinement to line u/s 56(c) of SSB Act, 2007 vide order dated 13/03/2019.

9. He, therefore, submits that the case of the petitioner was not one such case which could have been considered under clause 2 of the Office Memorandum dated 10/06/2019.

10. Having considered the strenuous submissions of the learned Advocates for the respective parties, we have gone through the record

placed before us. Time and again, the petitioner had submitted resignation letters which were not considered by the respondents. In one such resignation letter dated 26/03/2016, he has also mentioned that he had thought of committing suicide, but refrained from doing so, since he has a wife and children. He, therefore, prayed for acceptance of his resignation.

11. We find from the impugned order that the Commandant had advised the petitioner, after counselling on 19/07/2019, to withdraw his resignation. Again on 20/07/2019, he was produced before the Commandant for the interview regarding his request for resignation. Despite such counselling, he was reluctant to continue in service since he wanted to attend to his ailing mother. It is in the above backdrop that the Commandant considered the effect of the above factors and also noted that after tendering the resignation on 16/07/2019, the petitioner had not performed his duties till the acceptance of the resignation on 25/07/2019.

12. Having perused clause 2 of the office memorandum, we are of the view that a withdrawal of resignation after its acceptance, is not an

enforceable right. There are catena of judgments which dis-entitle an employee to withdraw his resignation after its acceptance. The petitioner has relied upon clause 2 of the office memorandum. In our view, the said clause does not create a right in an employee to withdraw his resignation within 90 days of its acceptance and seek reinstatement.

13. The language used in Clause 2 is that, “*the appointing authority may permit a person to withdraw his resignation in the public interest .....*” As such, the said provision vests discretionary powers in the competent authority to permit an employee to withdraw the resignation. Hence, it cannot be held that clause 2 creates an indefeasible right in an employee to withdraw his resignation and seek reinstatement in service. Such withdrawal can be permitted only in public interest.

14. In our view, the reinstatement of the petitioner would not involve any public interest, in as much as, he had suffered 28 days rigorous imprisonment in Force custody for having unauthorizedly left the campus of SHQ SSB Tezpur (Aasam) after the trial with regard to the firing of the bullet had commenced. He was also penalized with 14

days pay fine for having fired a bullet which injured his right thigh. He has undergone several other punishments, including for an offence of making false allegations against a Senior Officer and violation of good order and discipline. In these circumstances, we do not find that any public interest would be sub-served if the petitioner is reinstated in service and that there would be a loss to the public at large if he is denied reinstatement.

15. In view of the above, this petition is dismissed. Rule is discharged.

( S.G. MEHARE, J. )

( RAVINDRA V. GHUGE, J. )