



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 21.12.2023

Judgment delivered on: 06.03.2024

+ W.P.(C) 8500/2021

RAKESH KUMAR BHARTIYA

..... Petitioner

versus

UNION OF INDIA, THROUGH ITS SECRETARY,

MINISTRY OF HOME AFFAIRS & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Himanshu Chaubey, Advocate

For the Respondent: Ms. Pratima N Lakra, CGSC with
Ms. Vanya and Ms. Kashish, Advocates.
SI S Sarkar, SSB.
SI Naresh Solanki, SSB.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. An interesting question is posed to us and it is to be answered whether it is permissible for any employer to process the resignation request which it had earlier declined to process?

2. Petitioner joined Sashastra Seema Bal (SSB) on 15.07.2008 as Assistant Commandant/Medical Officer. His wife has also joined SSB as a Medical Officer. They had a specially-abled child who required constant supervision and support. Petitioner used to request for posting him and his wife at the same command center but his such request was not always acceded to.



3. When the petitioner was posted as Second-In-Command (Medical) in 28th Battalion, SSB at Antagarh, Chhattisgarh, on account of the difficulties being faced by him and repeated rejection of his leave applications, he tendered resignation on 04.11.2020.

4. Respondents, however, asked him to submit application afresh asking him to specify therein specific date from which he intended to proceed on resignation and also directed him to submit such application, at least, 30 days before the intended date of resignation. Such communication was duly conveyed to the petitioner and he was directed to submit application afresh in the aforesaid terms. Such letter was received by him on 21.12.2020.

5. Petitioner, after due deliberation with his family members, decided to continue with his job and not to submit any fresh application. He, instead, in order to apprise Director General (DG), SSB about his grievances sent an e-mail dated 26.12.2020 requesting for a personal interview with him. Such email was duly received and acknowledged but petitioner did not receive any communication from the respondents. Since he was asked to submit application afresh, he remained under the impression that his previous request had become redundant.

6. Petitioner also sent one letter dated 13.01.2021 requesting respondents to transfer him to any family-station on compassionate grounds.



7. However, to his utter shock, he received a letter from respondents on 04.02.2021 informing him that his earlier application submitting resignation (letter dated 04.11.2020) had been accepted and that he stood relieved of his duties with effect from 04.02.2021.

8. His request for recalling such acceptance has been turned down vide Memorandum dated 26.03.2021.

9. It is in the aforesaid background that he has filed the present writ petition seeking direction that said order dated 04.02.2021, whereby his resignation has been accepted, be set aside, with consequential relief.

10. Apparently, the grievance of the petitioner is very short and precise.

11. He, admittedly, submitted resignation on 04.11.2020 but the same was not processed and he was rather asked to submit application afresh with specific particulars. According to petitioner, he decided not to resign and rather sought personal hearing but the respondents, in arbitrary and unlawful manner, processed his previous application which they had earlier declined to entertain or process.

12. The factual aspects are not disputed by the respondents but according to them, if at all petitioner wanted to withdraw the request of resignation, he should have rather moved a proper specific application and since he never submitted any application seeking withdrawal of his resignation, there was no embargo and prohibition



in processing the application already received by them. It is also claimed that the petitioner has no *locus poenitentiae* to withdraw an offer of resignation which had already been accepted. According to respondents, his application was acted upon and was forwarded to Ministry of Home Affairs, in terms of Rule 28 of the SSB Rules, 2009 for acceptance by the competent authority and MHA accepted the resignation and, therefore, there was no merit or substance in the present writ petition.

13. We have seen the resignation request dated 04.11.2020, which reads as under:-

“SUB:- SUBMISSION OF RESIGNATION FROM GOVT. SERVICE

Respected Sir,

With due respect, I want to submitted Resignation from SSB MHA Govt. of India due to my personal liabilities & health conditions with prior intimation of 3 month notice from today.

I was joined SSB on 13 Aug-2008 and completed my 10 years service on 13 Aug-2018 so kindly accept my resignation as per rule please.”

14. Respondents received the aforesaid request and, instead, asked him to submit application afresh. It will be worthwhile to note the contents of such communication dated 12.12.2020 sent by MHA to the petitioner:-

“Subject:- Reg. submission of fresh application of resignation with specific date.

Sir,



It is with reference to your application dated 04.11.2020 tendering therein resignation from Govt. service with three month prior intimation.

In this regard, it is intimated that your application alongwith relevant documents was sent to FHQ, SSB, New Delhi for further acceptance. Now, FHQ, SSB, New Delhi vide their fax message No.07/SSB/Spl-Ops/FHQ/CG/2020(42)/6407 Dated 11.12.2020 (Copy enclosed) has asked to submit a fresh application of resignation with specific date from which you intends to proceed on resignation.

Further, it has been requested by FHQ, SSB that the application should reach to their office 30 days before the intended date of resignation so as to process the resignation case with MHA in time.

It is for your kind information and further necessary action at your end please.”

15. It is not in dispute that the petitioner received the aforesaid communication and referring to the above said communication, he sought personal hearing from DG, SSB. This is apparent from his e-mail dated 26.12.2020.

16. In the aforesaid backdrop of the communication, it is to be seen whether it was lawful for the respondents to have acted upon the aforesaid application dated 04.11.2020 or not.

17. If one goes through the contents of letter dated 12.12.2020, issued by the respondents, it would become as plain as day that the respondents had declined to process the same. They wanted the petitioner to submit a fresh application of resignation with specific date from which he intended to proceed on resignation, asking further that such application should reach their office 30 days before the intended date of resignation so that it could be processed with MHA in time.



18. The only conclusion which one can draw from the contents of the aforesaid letter is that the respondents had, in no uncertain terms, refused to process such application as according to them it was lacking in some material particulars. The manner in which the aforesaid communication dated 12.12.2020 is worded leaves no element of ambiguity or vagueness and is clearly suggestive of the fact that such request of resignation was declined to be processed. Therefore, logically speaking and as an inevitable conclusion, there was no reason or occasion for them to have re-entertained the same. Respondents were fully aware that the petitioner had requested for a personal hearing and had even sought transfer to a family station and that he had not submitted any application afresh and therefore, it was in teeth of their own order to have picked up the previous application which they had declined to process and to have accepted the same, out of the blue.

19. We may also highlight two important related aspects.

20. Firstly, as per Central Civil Services (Pension) Rules, 1972, there is no absolute bar on any employer in even permitting withdrawal of resignation after its acceptance. Rule 26 envisages certain situations wherein withdrawal of resignation can be permitted even after it had been accepted and had become effective. Here, as already noticed above, what to say of acceptance, the respondent had rather declined to process the resignation request which tantamount to 'deemed refusal'.



21. Secondly, in context of the Force in question i.e. Sashastra Seema Bal, no member of the force is at liberty to resign during the term of engagement. This is apparent from Section 8 of Sashastra Seema Bal Act, 2007. As per Rule 28 of Sashastra Seema Bal Rules, the Central Government may, having regard to the special circumstances of any case, permit any officer of the Forces to resign before the completion of the term of engagement and it may accept the resignation w.e.f. the date as it may consider expedient.

22. Thus, in Sashastra Seema Bal, nobody can resign as per his own whims and fancies and it is for the Central Government to consider such request, having regard to the special circumstances of any such case and it may eventually accept the resignation with effect from such date as it may consider expedient.

23. In the case in hand, for the reasons best known to the respondents they did not act upon the resignation request and rather directed the petitioner to submit application afresh while mentioning specific date from which he intended to proceed on resignation and also asked him that such application should reach them 30 days before to the intended date of resignation so as to process the resignation case with MHA in time.

24. As noted already, the petitioner did not choose to submit any application afresh. He rather decided to continue in service and made twin request i.e. personal hearing from DG, Sashastra Seema Bal, and also transfer on compassionate grounds.



25. In such a peculiar backdrop, the respondents were *estopped* from taking any further action, unless they had received a fresh request. Thus, they had no reason/cause to process his previous application which had, obviously, become stale and *non-est*. Such action of respondents is, therefore, totally impermissible in the eyes of law.

26. Things would have been different had the respondents, in their communication, stated that in case no fresh application was received, they would process the previous one.

27. Moreover, the earlier resignation request, being turned down, albeit, for want of certain particulars, it was no longer obligatory for the petitioner to have submitted any formal application seeking withdrawal of his resignation request.

28. In view of our foregoing discussion, we hereby set aside order dated 04.02.2021. The petitioner would be, therefore, deemed to be in service and would be fully entitled to all consequential benefits.

29. Writ Petition stands allowed in the aforesaid terms.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

MARCH 06, 2024
st/sw