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

Date of decision: 14th October, 2025

IN THE MATTER OF:

+ **W.P.(C) 6088/2017**

V LINGA RAJU

.....Petitioner

Through: Mr. A.K. Trivedi, Adv.

versus

UOI AND ORS

.....Respondents

Through: Mr. Prasanta Varma, SCGC, UOI
with Ms. Richu Gupta and Mr. R.N.
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

1. The instant writ petition has been filed with the following prayers:

"a. pass a writ, order or direction in the nature of a writ of mandamus, thereby quashing the order of forced resignation dated 23.11.2013 passed by the Commandant 108 Bn BSF, Shillong and order dated 31.07.2014 passed by the Dy. Inspector General, HQ Meghalaya FTR, BSF SHG., order dated 24.06.2016 of the Asstt. Commandant for IG, BSF whereby they rejected the statutory petition and Revision petition.

b. further pass a writ, order or direction in the nature of a writ of mandamus thereby directing the respondents to reinstate the petitioner in service with retrospective effect with all consequential benefits.

c. pass such other or further orders as deem fit and proper in the



circumstances of the case.”

2. Shorn of unnecessary details, the facts of the case reveal that the Petitioner joined the BSF in the rank of Constable in the year 2007.

3. As per the Petitioner, he was granted 30 days earned leave from 06.01.2010 to 04.02.2010. It is stated that during this period, the Petitioner developed some serious ailments and he could not rejoin the duties in time as he was undergoing treatment in the supervision of medical officer at his native place. It is stated that since his condition deteriorated, he informed to his Unit through a letter that he is unable to join duty because of his ill health and will join duty as soon as he recovers. It is stated that despite the said letter, the Commandant of the 108th Battalion, BSF without considering the facts and circumstances, dismissed the Petitioner from service on 16.08.2010. It is stated that a petition under Rule 28 A of the BSF Act was submitted by the Petitioner to the IG BSF, Kashmir Frontier against his termination order. The IG BSF, Kashmir Frontier set aside the termination order and passed the order of reinstatement of the Petitioner in the service.

4. It is stated that in the year 2012, the Petitioner developed low backache which radiated to his lower left limb and he was under treatment in the North Eastern Indira Gandhi Regional Institute of Health and Medical Sciences, Mawdiangiang, Shillong (NEIGRHMS). It is stated that the Petitioner was diagnosed as having "degenerative disc disease of LS spine with central disc bulge at L 5 SI level with compression over SI Root" and the Petitioner was advised complete bed rest. He was advised to get admitted in NEIGRHMS in the Ortho Ward for operation on 04.11.2013.

5. It is stated that the Petitioner remained admitted in the BSF hospital from 21.10.2013 to 21.11.2013. Though the Petitioner was advised surgery by the NEIGRHMS, he was not in favour of immediate surgery as he was

W.P.(C) 6088/2017

Page 2 of 7



hopeful that he would improve. The Petitioner stated that he requested for a transfer from Shillong. It is stated that the Petitioner was discharged from the Composite BSF Hospital, Shillong and was sent to the Unit. On reaching the Unit, he requested for a leave for 60 days to get his surgery at his home town.

6. It is the case of the Petitioner that he was forced to tender his resignation on 15.11.2013 while he was still admitted in the Composite BSF Hospital in Shillong. The Petitioner was discharged from the hospital on 20.11.2013. On developing some serious ECG problems, the Petitioner was referred to the NEIGRHMS for echocardiography but he was forcibly discharged from the hospital on the advice of the Commandant of the 108th Battalion, BSF and his resignation was accepted on 23.11.2013 w.e.f. 30.11.2013.

7. Material on record indicates that on 01.12.2013, the Petitioner has once again written a letter to the Commandant, 108 Battalion, BSF, commanding that he does not want to serve the BSF and his resignation be accepted w.e.f. 30.11.2013 at his own request under Rule 19 of the BSF Rules, 1969 without any pensionary benefits. The letter also stated that necessary recovery of outstanding dues, if any, be made from his GPF for final withdrawal.

8. The Petitioner had a change of mind on 29.12.2013 and he submitted a representation under Rule 28 A of the BSF Rules stating that his resignation is not voluntary and he was forced to resign. This representation was rejected *vide* Order dated 31.07.2014. Thereafter, the Petitioner filed a revision petition before the Competent Authority, which was rejected *vide* Order dated 24.06.2016, which is annexed with this petition.

9. The Petitioner has contended that he was forced to resign, a fact

W.P.(C) 6088/2017

Page 3 of 7



which has been denied by the Respondent-BSF. The issue as to whether he was forced to resign or what were the circumstances which compelled him to resign, are pure questions of fact which cannot be decided without leading evidence. It was for the Petitioner to file a suit and establish by leading evidence to demonstrate the fact that he was forced to resign. Instead of filing a suit, the Petitioner has chosen to file a writ petition for decision wherein the writ Court decides matters only on the basis of admitted documents and statements made in affidavit.

10. Learned Counsel for the Petitioner draws the attention of this Court to Rule 26 of the CCS Pension Rules, 1972 to contend that even in case of resignation, the Appointing Authority can permit a person to withdraw the resignation in public interest. Rule 26 is reproduced as under:-

“26. Forfeiture of service on resignation.-

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) The order accepting the resignation should clearly indicate that the Government servant has resigned to join another appointment with proper permission and a specific entry to this effect shall also be made by the Head of Office in the service book of the Government servant.

(4) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.



(5) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

(i) 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;

(ii) 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;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person applies for 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.

(6) 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.

(7) 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.

(8) A resignation submitted for the purpose of rule 35 or rule 36 shall not entail forfeiture of past service under the Government."

11. Rule 26, empowers the Appointing Authority to permit a person to withdraw his resignation, provided it is in public interest and the other



conditions mentioned in Rule 26(5) are complied with.

12. The Order dated 31.07.2014 by which the representation of the Petitioner was rejected reveals that the Petitioner has been habitual in taking leaves without prior permission. Paragraph Nos. 3 of the said Order read as under:-

"3. On scrutiny of records, it revealed that No. 02164325 EX-Const V. LINGA RAJU was enrolled as a Constable (GD) in BSF on 19-12-2002. After completion of his Basic Recruit Trg, he was posted in 138 Bn BSF on 04-01-2004 and further joined 108 Bn BSF on 19.08.2009 on his permanent posting. During his short span of service, he was found a soldier of poor discipline having habit of OSL and AWL. As per record, the details of his OSL and AWL cases are as under:-

<i>S/No.</i>	<i>Period</i>		<i>Remarks</i>
<i>i)</i>	<i>06-08-05 to 08-10-05</i>	<i>= 64 days</i>	<i>Regularized</i>
<i>ii)</i>	<i>03-07-08 to 16-07-08</i>	<i>= 13 days</i>	<i>Regularized</i>
<i>iii)</i>	<i>20.05.09 to 19-08-09</i>	<i>= 92 days</i>	<i>Regularized</i>
<i>iv)</i>	<i>05-02-10 to 16.08.10</i>	<i>= 193 days</i>	<i>Regularized</i>
			<i>Dismissed from service on 16/08/2010 85 further re- instated in service on 24.01.2011 sympathetically by CA.</i>
<i>v)</i>	<i>01.06.11 to 06.07.11</i>	<i>= 36 days</i>	<i>Punishment awarded 14 days RI in force custody</i>
<i>vi)</i>	<i>21.03.12 to 08.10.12</i>	<i>= 202 days</i>	<i>Regularized</i>
<i>vii)</i>	<i>26.07.13 to 22.09.13</i>	<i>= 59 days</i>	<i>Regularized</i>
<i>viii)</i>	<i>01.01.06 to 08.03.06</i>	<i>= 66 days</i>	<i>Punishment awarded 28 days RI in force custody."</i>



13. The order reveals that the Petitioner has been punished on more than one occasion for unauthorised absence and for other misconducts. It cannot be said that the services of the Petitioner would be required in public interest.

14. The scope of interference in administrative decisions is now well settled. The Apex Court in the Judgment of *State of A.P. v. S. Sree Rama Rao, 1963 SCC OnLine SC 6*, has held that the High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities if there are valid reasons given in the administrative order and the same has been passed after following the procedure and taking into account relevant material and is not malafide.

15. The Petitioner has not been able to demonstrate that the resignation was taken by force. There is nothing on record which would indicate that the decision of the Respondent to decline the representation is perverse warranting interference of this Court under Article 226 of the Constitution of India. Moreover, the Petitioner even failed to make out a case which would persuade this Court to pass a writ of mandamus directing the Respondents to consider the case of the Petitioner under Rule 26(5) of the CCS Pension Rules.

16. With these observations, the writ petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

OCTOBER 14, 2025

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