

Manish Kumar Vs. The Union of India, represented by the Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi and Others

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Court : Guwahati

Decided On : Dec-04-2014

Judge : B.K. Sharma

Appeal No. : WP (C) No. 4714 of 2012

Appellant : Manish Kumar

Respondent : The Union of India, represented by the Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi and Others

Advocate for Pet/Ap. : Mr. S.N. Tamuli, Mr. Tamuli

Judgement :

1. The petitioner is aggrieved by the Annexure-2 order dated 18/07/2012 discharging him from service on account of the resignation w.e.f. 01/10/2012. According to the petitioner he had never tendered resignation from service and the resignation letter that was shown to have been tendered by him is in fact is the product of forgery.

2. The petitioner joined the Assam Rifles as Sepoy (GD) in the year 2003 and thereafter was promoted as Rifleman in the year 2005. While he was posted at the newly formed Unit of the Assam Rifles i.e. 46 Assam Rifles, he was punished for unauthorized absence from duty. Thereafter he joined duty but on 18/07/2012, the

impugned order was issued discharging him from service w.e.f. 01/10/2012. Such discharge was on the ground of resignation from service tendered by him.

3. As regards the unauthorized absence from duty, it is the stand of the petitioner that he had to leave the Unit to attend his mother who was in a very critical condition. That was in 2010. As stated in the writ petition he had reported back to duty in September, 2011. According to him, on resumption of duty, the authority asked him to sign some papers which he accordingly did and later on came to know that the same were used towards issuance of the order of discharge from service. Referring to Rule 27 of the Assam Rifles Rules, the petitioner has contended that for acceptance of resignation, there will have to be resignation letter from the employee and in absence of the same, the employer cannot do anything unilaterally.

4. The respondents have filed their counter affidavit denying the aforesaid stand of the petitioner. The affidavit reveals that the petitioner abandoned his post without any information to any superior officer jeopardizing security of the post. He remained absent for 496 days and was declared a deserter by a Court of Inquiry. Although in the writ petition, the petitioner has taken the plea of his mother being sick but no such intimation was given to the authority during the period of his absence. It appears that the petitioner was declared absent without leave and the report to that effect was forwarded to all concerned.

5. As per the procedure an Apprehension Roll to apprehend the petitioner was issued to the District Magistrate, Mandi, Himachal Pradesh with copy to the Superintendent of Police, Mandi vide letter dated 12/05/2010. The Court of Inquiry that was conducted against the petitioner opined that the petitioner be declared as deserter w.e.f. 10/05/2010. On 19/08/2010, the Unit received a handwritten letter from the petitioner under covering letter dated 17/08/2010 for sanctioning of discharge from service at his own request on compassionate ground. When the matter rested thus, the petitioner voluntarily reported for duty on 18/09/2011 after remaining absent without leave for 496 days. The Unit convened a Court of Inquiry on 25/10/2011 to ascertain the reasons for unauthorized absence from duty. As per the findings of the Court of Inquiry, he was awarded the penalty of RI for 28

days for the offence of unauthorized absence from duty. Meanwhile the petitioner submitted another application for discharge on his own request on 30/09/2011. On receipt of the same, the Unit processed the matter as per the procedure and convened the Board of Officers to rule out the possibility of any coercion or pressure on the petitioner to submit the application for discharge on his own request. After such an elaborate procedure, the Board of Officers opined that there was no pressure or undue influence to tender resignation from service.

6. In the counter affidavit, the respondents have further contended that not only the petitioner tendered resignation from service on 30/09/2011 but he also signed the undertaking that he had done so at his free will without any coercion, threat, inducement from anybody. He also signed the undertaking certifying that he was aware of the consequences of discharge from service on own request. After observing the required formalities, the authority issued the impugned order of discharge. In paragraph 12 of the counter affidavit, it has been stated thus :-

12. That as regards the statements made in para 10 of the writ petition it is submitted that petitioner made false statement to mislead the Honble court on facts. The petitioner himself had made application for discharge from service while he was unauthorisedly absent from duty from 10/05/2010 to 17/09/2011. His hand written request was received through Kumaon Regt Centre vide their letter No. 50864/A dated 10/08/2010. In response 46 Assam Rifles advised that his physical rejoining the duties is essential to process his request for discharge from service. Pursuant to instruction he rejoined duty and signed all relevant documents and certificates essential for processing his discharge from service. The application for discharge from service was processed through proper channel and his discharge was sanctioned by competent authority to be effective from 01/10/2012. In the light of these material facts on record, petitioners statement that he never applied for discharge is false and aimed at misleading the Honble Court on facts because his letter of Kumaon Regt Centre dated 17/08/2010 and his application are placed on record with respondents. He was not forced to sign any papers under coercion or duress, but on contrary, the petitioner had rejoined duties from unauthorized absence to have his discharge sanctioned by the competent authority. Therefore the petitioner may be held guilty for making false statement.

7. In the reply affidavit filed by the petitioner, the plea that he did not sign any letter of resignation has again been reiterated. His categorical stand is that even he did not submit any letter of resignation on 30/09/2011.

8. I have heard Mr. S.N. Tamuli, learned counsel for the petitioner and I have also heard Mr. M. Bhagabati, learned CGC. I have also perused the entire materials on record including the records produced by Mr. M. Bhagabati, learned CGC. When the matter was last taken up on 11/11/2014, Mr. Bhagabati, learned CGC was directed to produce the records in view of the stand of the petitioner that the letter of resignation was not signed by him. When the signature appearing in the first letter of resignation was verified in reference to the signature appearing in the departmental appeal and the Vakalatnama filed in this proceeding, variation was found and accordingly the learned CGC was directed to produce the records. Today he has produced the records and I have very carefully gone through the same.

9. Admittedly, the petitioner remained absent from duty unauthorisedly for 496 days. He was also declared deserter. Upon his resumption of duty voluntarily, a Court of Inquiry was conducted relating to the charge of unauthorized absence from duty. On the basis of the recommendation of the said Court of Inquiry, he was awarded with the penalty of RI for 28 days. Meanwhile the petitioner submitted another letter of resignation on 30/09/2011 as available in record. By the said letter addressed to the Director General of Assam Rifles, the petitioner made a request to discharge him from service on the ground of being unable to continue further in his service due to personal and domestic problems. The resignation tendered by the petitioner was placed before the Board of Officers as per the procedure to rule out the possibility of any coercion or pressure etc on the petitioner to tender resignation from service. The Board of Officers duly convened its meeting and taking note of all the attending facts and circumstances and the materials on record, came to the conclusion that there was no coercion or influence on the petitioner to tender resignation. The petitioner was granted the discharge on his own request on furnishing certificate of undertaking dated 24/10/2011. He also signed another certificate dated 24/10/2011 that upon acceptance of request for discharge from service on his own request, he would not be entitled to any

pensionary benefits.

10. The whole basis of the claim of the petitioner is that he did not tender resignation till the first letter of resignation annexed to the counter affidavit (Annexure-IV). The said letter was written in Hindi and the signature of the petitioner also was in Hindi unlike the subsequent letters in which he put his signature in English. When this letter was received by the particular division, the same was forwarded vide letter dated 17/10/2010. Had it been the intention to get rid of the petitioner from the services of the Assam Rifles, the authority could have accepted the said letter of resignation, more so, when the petitioner was continuously absent from duty unauthorisedly. The respondents did not do anything of this sort rather required the petitioner to rejoin duty to process the letter of resignation. Upon rejoining of duty, the petitioner was tried by a Court of Inquiry in which he was found guilty of unauthorized absence and accordingly he was imposed with a penalty of RI for 28 days.

11. While the first letter of resignation which the petitioner has denied was forwarded on 17/10/2010 and no action followed thereafter, the petitioner submitted another letter of resignation on 30/09/2011. Coupled with this he also submitted two undertakings, one certifying that he was under no pressure to tender resignation from service and that upon acceptance of resignation from service he would not be entitled to any pensionary benefits.

12. Mr. Tamuli, learned counsel for the petitioner has tried to explain the said 3 documents stating that the petitioner being only a constable in the Assam Rifles was unaware of the legal niceties and that he might have signed the documents without understanding the contents thereof. The submission is in variation of the statement made in the writ petition that when rejoined the duties, the petitioner was asked to sign some blank papers and the same were made use of for creating the story of resignation from service.

13. Mr. Tamuli, learned counsel for the petitioner lastly submitted that the petitioner has fallen short of qualifying service for pension and that this aspect of the matter was required to be considered by the authority empowered in this regard. Mr. Bhagabati, learned CGC, however, submits that having regard to the

fact that the petitioner did not have qualified service for pension coupled with the fact that he has tendered resignation from service and the same has been accepted, there is no question for providing him any pensionary benefits. Even if the first letter of resignation is not accepted then also the question necessarily will arise as to why the letter of resignation dated 30/09/2011 should not be believed, more so, when the same had followed by two certificates furnishing undertaking that the petitioner had understood the consequences thereof.

14. For all the aforesaid reasons I do not find any merit in the writ petition and accordingly it is dismissed. However, dismissal of the writ petition shall not be a bar for the authority to revisit the matter, if permissible under the rules. There shall be no order as to costs.

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