



GAHC010005852011

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2626/2011

EX-CONSTABLE, FORCE NO. 89008021 NIRMAL KUMAR SHARMA
S/O SHRI PREM NATH SHARMA, VILL KUNDE LALOWAL, P.O.JANGAL,
TEHSIL GURDASPUR, DIST GURDASPUR, PUNJAB, PIN CODE - 143521

VERSUS

THE UNION OF INDIA and ORS
REP. BY THE SECY, MINISTRY OF HOME AFFAIRS, JAISELMER HOUSE, 26,
MAN SINGH ROAD, NEW DELHI, PIN-110011

2:THE DIRECTOR GENERAL

BORDER SECURITY FORCE
CENTRAL GOVT. OFFICE COMPLEX
LODHI ROAD
NEW DELHI
PIN-110003

3:THE INSPECTOR GENERAL

BORDER SECURITY FORCE
SHILLONG
MEGHALAYA
PIN-793006

4:THE COMMANDANT

128 BATTALION
BORDER SECURITY FORCE
PATGAON
GUWAHATI
ASSAM



PIN-781017

5:NAIMUDDIN

THE THEN COMMANDANT 128 BATTALION
ORDER SECURITY FORCE
TO BE SERVED THROUGH THE RESPONDENT NO.

For the Petitioner(s) : Mr. H. Bezbaruah, Advocate

For the Respondent(s) : Mr. H. Gupta, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 17-08-2023

1. The instant writ petition had been filed by the petitioner challenging the acceptance of his purported resignation by the order dated 25.04.2003 w.e.f. 30.04.2003 and with a further direction that the petitioner be reinstated to his service and be granted of his all consequential benefits.

2. The fact of the instant case as would transpire from the records would show that the petitioner joined the Border Security Force ('the BSF', for short) as a Constable General Duty on 16.03.1989 and on 19.10.2002 an order was passed by the Commandant 64 Battalion, BSF whereby the petitioner was dismissed from the service w.e.f. 19.10.2000 on the ground that the petitioner was absent without leave w.e.f. 11.06.2000 without any reasonable cause.

3. The petitioner thereupon preferred an Appeal before the Inspector General, the Appellate Authority. The Appeal was allowed vide order dated



20.04.2002 whereby the Petitioner was reinstated and it was further observed by the Appellate Authority that necessary action be taken for regularizing the period from the date of dismissal i.e. 19.10.2000 to the date of joining against the Petitioner's available leave. Further to that there was also a direction that the Petitioner be transferred to the 128 Bn BSF. Further to that, the 128th Bn was permitted to take disciplinary proceedings pending against the Petitioner in the 64 Bn.

4. The Petitioner thereupon rejoined his services on 10.06.2002 at the 128 Bn BSF, Patgaon. On 05.07.2002, the period of the Petitioner's absence from 19.10.2000 to 09.06.2002 was regularized against the available leave of the Petitioner.

5. It is the Petitioner's case that during the period from 05.07.2002 to 25.04.2003, the Commandant 128 Bn BSF harassed the Petitioner by awarding him hard duties and imposed upon him 28 days rigorous imprisonment by lodging the Petitioner in the quarter guard without any trial or inquiry and constantly pressurized the Petitioner to resign from service.

6. It is the further case of the petitioner that Commandant 64th Battalion, BSF had forced the petitioner to submit a resignation letter on 08.04.2003. The Petitioner under coercion submitted a resignation letter stating inter alia that on account of domestic problem he wanted to resign from the job voluntarily and requested that his resignation may be accepted immediately.

7. Thereupon on 25.04.2003, the resignation of the petitioner was accepted w.e.f. 30.04.2003(A/N) without pensionary benefits. The record further reveals that after one year, the petitioner preferred a Civil Suit before the Court

of the Civil Judge (Junior Division), Gurdaspur in the State of Punjab which was registered as Civil Case No. 372/2004. By a judgment and decree dated 18.09.2007, the suit was decreed thereby declaring the order dated 30.04.2003 as null and void and the respondents herein who were the defendants in the said suit were directed to allow the plaintiff i.e. the petitioner herein to give voluntary retirement and also direct to release the Retiral benefits to the petitioner as per Rules.

8. The said judgment and decree dated 18.09.2007 passed in Civil Case No. 372/2004 was put to challenge by the Respondents before the District Judge, Gurdaspur which was registered as Civil Appeal No. 21/2008. The learned District Judge by a judgment and order dated 03.08.2009 did not decide the appeal on merit but held that there was no territorial jurisdiction of the Trial Court to entertain the dispute. Accordingly, the parties were directed to appear before the Trial Court on 10.08.2009 with a further direction to the Trial Court to return the Plaint to the Petitioner under Order VII Rule 10 of the Code of Civil Procedure, 1908.

9. It further reveals that pursuant thereto, the petitioner preferred a Civil Writ Petition No. 14888/2010 before the Punjab and Haryana High Court challenging the order dated 30.04.2003. The said writ petition however dismissed vide an order dated 20.08.2010 on the ground of territorial jurisdiction.

10. Subsequent thereto the petitioner approached this Court by filing the instant writ petition on 21.05.2011. The record reveals that on 25.05.2011 this Court issued Rule. It further reveals from the record that an Affidavit-in-Opposition was filed by the Respondents wherein there was a denial that force



was employed upon the petitioner for submitting the resignation letter on 08.04.2003. In paragraph No. 11 of the said Affidavit-in-Opposition, it was mentioned that the Petitioner had himself on his own volition submitted his resignation on 08.04.2003 stating therein that due to his own domestic problem, he would not be able to continue his service in the BSF and requested for acceptance of his resignation letter as early as possible. It was further mentioned that acting upon the said resignation letter of the petitioner the then Commandant 128th Battalion, BSF accepted his resignation from service w.e.f. 30.04.2003 vide 128th Battalion Border Security Force Order No. Estt./857/128 Bn/03/3269-82 and the petitioner was struck off strength from the Unit w.e.f. 30.04.2003. It was further mentioned that the petitioner did not approach the appropriate authority for readdressing of his grievances and had filed the instant writ petition for which the instant writ petition ought to be dismissed.

11. This Court duly heard learned counsel for both the parties and also perused the materials on record. From the facts narrated above and contentions of the parties, two issues arise for consideration. First, whether the acceptance of the resignation of the petitioner was accordance with Section 8 of the BSF Act, 1968 read with Rule 19 of the BSF Rules, 1969. Secondly, if not, what relief(s) the petitioner can be granted by this Court taking into account that more than 20 years had passed since the Petitioner's resignation was accepted.

12. For the purpose of adjudicating the first issue, this Court finds it relevant to reproduce Section 8 of the BSF Act, 1968 which is quoted herein under :-

"8. Resignation and withdrawal from the post.—No member of the Force shall be at liberty,—

(a) to resign his appointment during the term of his engagement; or (b) to withdraw himself from all or any of the duties of his appointment, except with the previous permission in writing of the prescribed authority.”

A reading of Section 8(a) of the BSF Act, 1968 would show that there has to be a previous permission in writing of the prescribed authority before a member of the Force can be permitted to resign.

13. This Court finds it relevant at this stage to reproduce Rule 19 of the BSF Rule, 1969. herein under :-

“19. Resignation.—*(1) The Central Government may, having regard to the special circumstances of any case, permit any officer of the force to resign from the force before the attainment of the age of retirement or before putting in such number of years of service as may be necessary under the rules to be eligible for retirement:*

Provided that while granting such permission the Central Government may:

(i) require the officer to refund to the Government such amount as would constitute the cost of training given to that officer [or three months pay and allowances, whichever is higher] or provided further that an officer of the force tendering resignation, for accepting a job under Central or State Governments or local bodies, after having been granted cadre clearance for the same [or who has completed 10 years of service] shall not be required to refund the sum as provided here in above.

(2) The Central Government may accept the resignation under sub-rule (1) with effect from such date as it may consider expedient.

(3) *The Central Government may refuse to permit an officer to resign:-*

- (a) *if an emergency has been declared in the Country either due to internal disturbances or external aggression; or*
- (b) *if considers it to be inexpedient so to do [due to exigencies of service] or in the interests of the discipline of the force; or*
- (c) *if the officer has specifically undertaken to serve for a specified period and such period has not expired.*

(4) The provisions of this rule, shall apply to and in relation to subordinate officer and enrolled persons as they apply to and in relation to any officer of the force and the powers vested in the Central Government under sub-rules (1) and (2) shall be exercised in the case of a Subordinate Officer by a Deputy Inspector General and in the case of an Enrolled Person by a Commandant.

14. A conjoint reading of Sub-Rule (1) and (4) of Rule 19 of the BSF Rule, 1969 with Section 8 of the BSF Act, 1968 and the same being applied to the facts involved herein, it would show that the Commandant of the 128 Battalion would have the authority to exercise the powers under Section 8(a) of the BSF Act, 1968 read with Rule 19(1) of the BSF Rules, 1969 subject to a previous permission in writing thereby permitting the Petitioner to resign from his services during the term of his engagement. The proviso to Sub-Rule (1) of Rule 19 stipulates that while granting permission by the prescribed Authority, it has to be taken into account that if an officer have rendered less than 10 years of service then the Central Government may require the officer to refund such amount which constituted the cost of training given to that officer or three

moths pay and allowances whichever is higher. However, the same shall not apply in respect to those officers who had accepted the job under the Central or the State Government or the Local Bodies after having granted cadre clearance for the same or who had completed 10 years of service with the BSF.

15. Sub-Rule (2) of Rule 19 of the BSF Rule, 1969 confers the discretion upon the Commandant, 128th Battalion BSF to accept the resignation under Sub-Rule (1) of Rule 19 of the Rules w.e.f. the date as it may consider expedient. Sub-Rule (3) of Rule 19 of the BSF Rule, 1969 stipulates that the Central Government may refuse to permit an officer to resign. Therefore a combined reading of Section 8 of the BSF Act, 1968 read with Rule 19 of the BSF Rule, 1969 shows that without the previous permission in writing, an enrolled member like the petitioner cannot submit his resignation or such resignation if so submitted cannot be accepted.

16. Under such circumstances, this Court put a query to Mr. H. Gupta, learned counsel for the respondents as to whether there was anything on records to show that any previous permission was granted prior to submission of the resignation or there was any intimation so given to the petitioner that he could apply for resignation in view of permission so granted. The records upon being produced do not show that there was any previous permission in writing prior to submission of the resignation or prior to acceptance of the resignation letter. Therefore taking into account as there is no previous permission in writing prior to submission of the resignation letter or even prior to acceptance of the resignation letter, the order dated 25.04.2003 by which the petitioner's purported resignation dated 08.04.2003 was w.e.f. 30.04.2003 accepted was contrary to the provision of Section 8 of the BSF Act, 1968 and Rule 19 of the

BSF Rules, 1969 for which the said acceptance of resignation vide the order dated 25.04.2003 is nonest in the eyes of law and accordingly set aside and quashed.

17. The next issue which arises is that what relief can be granted in the present facts and circumstances, taken into consideration that for the last 20 years, the petitioner is no longer in service. It is relevant to observe that the effect of setting aside the order dated 25.04.2003 whereby the petitioner's resignation was accepted w.e.f. 30.04.2003 would mean that there was no resignation by the Petitioner and the petitioner would be deemed to be in service during this period of time from 01.05.2003 till date.

18. This Court also cannot be unmindful of the fact that for the last more than 20 years, the petitioner is not in service and to reinstate him to a disciplined service like the BSF at this stage would not be in the interest of administrative exigency of a disciplined force. Further, due to long absence from a disciplined force, it is not known whether the Petitioner can be cope up. This Court cannot also be unmindful of the fact that the petitioner's resignation was accepted contrary to the provision of the BSF Act, 1968 and the Rules. Under such circumstances, the petitioner's interest is also required to be taken care of.

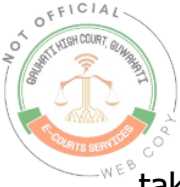
19. Under such circumstances, this Court finds it relevant to take note of the contentions of the learned counsels for the parties.

20. Mr. H. Bezbaruah, learned counsel for the petitioner submitted that the petitioner has no objection if he is given voluntary retirement w.e.f. today thereby granting him the pensionary benefits by regularizing his services till date for pensionary benefits.

21. Mr. H. Gupta, learned counsel for the respondents submitted that reinstating the Petitioner at this stage would affect the discipline in service inasmuch as the Petitioner had not been in service for 20 years.

22. Upon considering the submissions, this Court is of the opinion that the interest of justice would be met if the petitioner is deemed to be in service till today and he is allowed to go on voluntary retirement w.e.f. today. This Court also agrees with the submission of Mr. H. Gupta, learned counsel for the respondents that allowing the petitioner to be reinstated would effect the administrative exigency of a disciplined service and in the further opinion of this Court, the Petitioner may not be able to cope up after the long passage of 20 years. It is also the opinion of this Court that as the petitioner had not rendered any service during this period, the question of the petitioner getting any benefits for the said period such as salary, promotion, etc. would not arise. However, as the petitioner would be deemed retired as on today, the said period of service be counted towards the pensionary benefits while computing the pensionary benefits of the petitioner.

23. Accordingly, this Court sets aside the purported resignation of the Petitioner dated 08.04.2003 as well as the order dated 25.04.2003 whereby the Petitioner's resignation was accepted. The petitioner would be deemed to be in service till today and the Petitioner be permitted to go on voluntary retirement w.e.f. 18.08.2023. The Respondent Authorities shall issue necessary orders in compliance to the said directions thereby permitting the Petitioner to go on voluntary retirement w.e.f. 18.08.2023. This Court further directs that during this period from 30.04.2003 till date, the petitioner would be entitled to any of the benefits such as salary, promotion, etc. but the said period till date shall be



taken into consideration for computing the pensionary benefits of the petitioner. The above directions are passed taking into account the exceptional facts and circumstances of the instant case.

24. Accordingly, in terms with the above observations and directions, this instant writ petition stands disposed of.

JUDGE

Comparing Assistant