



GAHC010316932019

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

Case No. : WP(C)/9532/2019

NITU KUMARI PANDEY
S/O- LT. MADAN PANDEY, R/O- NEW S.T. PATEL FIELD, P.O. DHURWA,
DIST.- RANCHI, JHARKHAND.

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NORTH BLOCK, CENTRAL SECRETARIAT, NEW DELHI.

2:THE SECY.
MINISTRY OF HOME AFFAIRS
GOVT. OF INDIA
NORTH BLOCK
CENTRAL SECRETARIAT
NEW DELHI- 110068

3:THE DIRECTOR GENERAL
C.I.S.F.
BLOCK 13
CGO
COMPLEX
LODHI ROAD
NEW DELHI- 110003.

4:THE INSPECTOR GENERAL OF CENTRAL INDUSTRIAL SECURITY FORCE
NORTH EASTERN SECTOR
HEAD QUARTERS
KOLKATA
PREMISES NO. 563
EAST KOLKATA TOWNSHIP KASBA KOLKATA
P.O. E.K.T. P.S. ANANDPUR



KOLKATA
WEST BENGAL.

5:THE DY. INSPECTOR GENERAL OF CENTRAL INDUSTRIAL SECURITY
FORCE
NORTH EASTERN ZONE HEAD QUARTER KOLKATA
PREMISES NO. 563
EAST KOLKATA TOWNSHIP KASBA KOLKATA
P.O.- E.K.T. P.S. ANANDPUR
KOLKATA
WEST BENGAL.

6:THE SR. COMMANDANT
C.I.S.F. UNIT
ASG
MOHANBARI AIRPORT
P.O. MOHANBARI
P.S. LAHOAL
DIST. - DIBRUGARH
ASSAM.

7:THE COMMANDANT
C.I.S.F. UNIT
ASG
MOHANBARI AIRPORT
P.O. MOHANBARI
P.S. LAHOAL
DIST. - DIBRUGARH
ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri U. K. Das, Advocate.

Advocates for the respondents : Ms. A. Gayan, CGC.

Date of hearing : **02.04.2024**

Date of Judgment : **02.04.2024**



JUDGMENT & ORDER

The rejection of the prayer of the petitioner for withdrawing her resignation from service is the broad subject matter which has been raised in this petition filed under Article 226 of the Constitution of India. The facts in brief may be stated as follows.

2. The petitioner was appointed as a Constable in the Central Industrial Security Force (hereinafter CISF) on 20.08.2008 and after completion of training, she was posted at Kota, Rajasthan vide an order dated 16.04.2009. From 11.09.2012 to 08.11.2012, the petitioner was on leave and in the meantime on 14.09.2012 an order of transfer of the petitioner to Dibrugarh was passed.

3. On the issue of overstay of leave, a departmental proceeding was initiated against the petitioner which had culminated in imposition of a penalty of reduction of pay for 3 years. Though such action was not put to any challenge, it has been pleaded that due to certain domestic problems, on 28.05.2013, the petitioner had submitted her resignation. The same was provisionally accepted vide a communication dated 29.05.2013 and on the same date, the petitioner was discharged. On the next date i.e. 30.05.2013, the name of the petitioner was struck off from the rolls of the CISF. The provisional acceptance was however attached with certain conditions which the petitioner had fulfilled.

4. It is the case of the petitioner that on 01.11.2013, she had submitted an application for withdrawal of her resignation which however was rejected on 29.11.2013 on the ground that the same was not submitted within the

prescribed period of 90 days and there was a delay of 65 days. On such rejection, the petitioner had submitted another representation dated 11.07.2014 before the Director General which was also rejected on 22.07.2014. Subsequent representations said to be filed by the petitioner were also rejected.

5. In 2018, the petitioner had approached the Hon'ble Jharkhand High Court by filing a writ petition being WP(S) No. 3219/2018 challenging the action of rejection of her application for withdrawal of resignation. The Hon'ble Jharkhand High Court however, vide order dated 14.02.2019 had rejected the aforesaid writ petition on the ground of territorial jurisdiction. Thereafter, pursuant to the liberty granted, the instant writ petition has been filed.

6. I have heard Shri U. K. Das, the learned counsel for the petitioner whereas the respondents are represented by Ms. A. Gayan, the learned CGC.

7. Shri Das, the learned counsel for the petitioner has submitted that the acceptance of the resignation, though provisionally was done on the very next date i.e. 29.05.2013 which was hasty and not proper whereby the petitioner was deprived of an adequate opportunity of re-consideration of her action. It is further submitted that though an Office Memorandum dated 04.12.2007 was taken into consideration as a ground for such rejection, the said Office Memorandum also provides for condonation of delay in appropriate cases.

8. By drawing the attention of this Court to the **Central Industrial Security Force Rules, 2001** which were framed under Section 22 of the **Central Industrial Security Force Act, 1968**, the learned counsel for the petitioner has submitted that the relevant provisions would be Rules 58 and 59. It is submitted that Rule 58 pertains to 'Resignation', Rule 59 is with regard to the

'Discharge Certificate'. It is submitted that though Rule 59 envisages that the Discharge Certificate should be in a particular form in APPENDIX "D", the same was not complied with and therefore the process cannot be held to be legal. Reliance has also been placed on Rule 77 as per which, so far as conditions of service are concerned, if no provision or insufficient provisions have been made in the Rules, the Rules for corresponding post in Central Government can be taken into consideration. By submitting that Rule 58 of the aforesaid Rules are insufficient, the learned counsel has contended that the CRPF Rules of 1955 would come into application. By drawing the attention of this Court to Rule 17 of the CRPF Rules, the learned counsel submits that the same is with regard to 'Discharge'. Reference has also been made to the CRPF Act of 1949, more specifically Section 6 thereof which is with regard to 'Resignation and Withdrawal'. It is stated therein that such resignation is envisaged only within the first three months of service and thereafter the withdrawal from service will have to be with prior permission of the authorities. Reference has also been made to the Schedule of the CRPF Act which pertains to 'Recruiting Roll' and it is submitted that the same would apply in case of Discharge.

9. The learned counsel for the petitioner has also referred to the CRPF Guidelines dated 17.05.1990 wherein certain conditions have been attached in case of acceptance of resignation. It is reiterated that since the guidelines in the CISF Act and the Rules are insufficient, the provisions of the CRPF Act and the Rules would be applicable.

10. Shri Das, the learned counsel has also added that there were difficulties in the matrimonial life of the petitioner and she was also having certain ailments. It is submitted that though the medical documents could not be annexed in the



petition filed before the Jharkhand High Court, such documents are placed on record in the present proceeding. It is submitted that even though the OM dated 04.12.2007 contemplates about the power to condone the period beyond 90 days, no reasons have been cited for not exercising the said power. He has also submitted that the delay of 65 days is marginal. By drawing the attention of this Court to the affidavit-in-opposition filed by the respondent nos. 1 to 6 dated 19.06.2020, more specifically the averments made in paragraph 2 thereof, the learned counsel for the petitioner has submitted that the three grounds cited purporting to defend the impugned action are not sustainable in law. He accordingly submits that the writ petition may be allowed and appropriate relief be granted to the petitioner.

11. *Per contra*, Ms. A. Gayan, the learned CGC has submitted that the initial approach of the petitioner to the Jharkhand High Court in the year 2018 was itself a belated approach as the cause of action, if any, had arisen on 13.05.2013. It is submitted that though liberty has been granted to the petitioner to approach this Court, the present approach has to be examined on its own merits. By drawing the attention of this Court to the application for resignation dated 29.05.2013 submitted by the petitioner, Ms. Gayan, the learned CGC has contended that while accepting the resignation though provisionally by the respondents, five conditions were attached which were fulfilled by the petitioner whereby the consistent conduct of the petitioner becomes evident. It is submitted that even the communication dated 29.05.2013, of provisional acceptance had three further conditions which included a clearance and accordingly the name of the petitioner was struck off and copy of the same was given to her. There was no objection of any nature from the petitioner and only on 01.11.2013, the application for withdrawal of

the resignation was submitted, by which time the 90 days period was already over. Though the application for withdrawal dated 01.11.2013 has not been annexed to the writ petition, Ms. Gayan, the learned CGC who is in possession of a copy of the application has submitted that there was no details in the said application and it was a simple application only for withdrawal. It is submitted that when the petitioner did not cite any acceptable and cogent reasons for withdrawal of her resignation, the rejection of the same cannot be faulted with. As regards the grounds of ailment taken by the petitioner, it is submitted that there is no such ground pleaded in the writ petition and only in the rejoinder affidavit such ground has been taken by annexing certain medical documents. By referring to the medical documents, Ms. Gayan has pointed out that even the alleged period of treatment would show that it is beyond the period of 90 days as the period is given as 26.08.2013 to 20.10.2013.

12. Ms. Gayan, learned CGC has further submitted that there is no occasion to fall back upon the Act and the Rules of the CRPF where there is no ambiguity or insufficiency in the CISF Act and Rules.

13. The rival submissions advanced have been duly considered and the materials placed before this Court have been duly examined.

14. It is not in dispute that the resignation was submitted on 28.05.2013 by the petitioner. Though such resignation was accepted on the very next date i.e. 29.05.2013, it was a provisional acceptance with which certain conditions were attached. Fulfillment of those conditions including refund by the petitioner would show the consistent conduct of the petitioner with her decision to sever her relationship with her employer. The entire action including the communication dated 30.05.2013 by which the name of the petitioner was struck off was done

in a transparent manner and in spite of the petitioner being fully aware of the same, she had applied for withdrawal of her resignation only on 01.11.2013. As indicated above, the application for withdrawal has not been annexed to the writ petition and from the copy being produced by Ms. Gayan, the learned CGC, it is seen that no details or reasons for such decision has been conveyed. The application for withdrawal of resignation was rejected on 29.11.2013. Though representations were submitted which were also rejected, this Court is of the opinion that subsequent filing of resignation would not extend the cause of action. The belated approach of the petitioner to the Jharkhand High Court only in the year 2018 itself raises a serious question on the *bona fide* of the petitioner as regards her grievance. Ms. Gayan, the learned CGC is correct in contending that though the Hon'ble Jharkhand High Court while rejecting the said writ petition on territorial grounds had granted liberty, the merits of the challenge are to be gone into.

15. The provision in the CISF Rules pertaining to resignation and discharge are explicit and is not held to be insufficient in any manner and therefore the contention of the learned counsel for the petitioner to take into recourse the Rules of CRPF is not acceptable.

16. The reasons cited in the impugned order dated 01.11.2013 are mainly three folds. Firstly, it has been held that the application has been filed beyond 90 days which is the prescribed period. Secondly, it has been held that no case of exceptional nature has been made out and thirdly, there is no element of public interest for accepting such withdrawal application. The aforesaid grounds, in the opinion of this Court are found to be cogent and reasonable and this Court, in exercise of the Certiorari jurisdiction would only examine the decision



making process which in this case appears to be done in a fair, transparent and reasonable manner.

17. With regard to the insufficiency of the grounds in the application for withdrawal of resignation, this Court has also seen that no grounds, as such were cited in the application dated 01.11.2013. The ground of illness clearly appears to be an afterthought inasmuch as such grounds were admittedly not taken in the petition before the Hon'ble Jharkhand High Court and even in this writ petition and only in the rejoinder affidavit, such ground has been taken. Though rejoinder affidavit may be held to be a part of the pleadings, the medical certificate is of a date which raises serious doubts on the grounds tried to be set up by the petitioner regarding her illness.

18. In view of the aforesaid facts and circumstances, this Court is of the considered view that no case for interference is made out and the acceptance of the resignation as well as the order dated 29.11.2013 by which the application for withdrawal of the resignation has been rejected appears to be fair and reasonable.

19. The writ petition accordingly stands dismissed.

20. No order as to cost.

JUDGE

Comparing Assistant