

HIGH COURT OF JAMMU AND KASHMIR JAMMU
SWP No. 1573/01
The Hon'ble Mr Justice Nirmal Singh

**Abhiram Verma
Versus
Union of India and ors
Decided On : 11.10.06.**

Mr R.P. Sangra, Advocate for the Petitioner.
Mr Nirmal Kotwa, CGSC for Respondents.

JUDGEMENT

1. Petitioner was commissioned in the Army Medical Corps under Short Service Commission (here-in-after referred to as the Commission) and appointed as Medical Officer on 27th of March'92, for a period of five years at the first instance. The age of the petitioner at the relevant time was 33 years 10 months. Thereafter the petitioner was granted permanent commission on 20th of Jan'98, at the age of 39 years 2 months. The petitioner was accorded the status of graded Specialist on 1st of June'94 and then Classified Specialist in Medicine on 1st of June'99 respectively. The petitioner having joined the Commission at a later stage has no chance of promotion to the first selection i.e. to the rank of Colonel in the Army Medical Corps. Petitioner moved an application dt. 15th of April'2000, before the respondents seeking resignation from the army on the ground of non availability of promotional prospects and ineligibility to acquire technical skill. The said application has been rejected by respondent No.2 vide order impugned dated 4th of Sept'2000. It is this order which has been impugned in the present writ petition.

2. Petitioner has made following substantive prayers in this petition:-

"1. Quash and set aside the order Annexure "C" dated 4th of Sept 2000, being illegal, unfounded and against the provisions of law.

2. Command the respondents to grant resignation to the petitioner on the ground of supersession and ineligibility to acquire technical skill.

3. Declare the order Annexure "B" as null and void and against the rules provided under law."

3. On notice, respondents have taken a preliminary objection that the present writ petition is not maintainable as the petitioner has filed a statutory complaint under Section

27 read with Defence Service Regulation Para 364, which is pending for consideration before respondents. On merit, it was pleaded that an officer seeking a career in armed forces is aware of his career prospects at the time of his entry into service and as such, it would not be in the interest of service to allow the officer to seek resignation on this ground. It is stated that the petitioner's request for resignation was examined under para 2(f) of the Policy letter MOD/D (Pens/Serv) letter No.8(5)/78D(MS)/D(Pens/Ser) dated 20th of Jan'79, and the same has been rejected keeping in view the manpower and operational requirement of the service.

4. I have heard learned counsel for the parties and perused the record. The concept of voluntary retirement by resignation has been considered by the Apex Court in the case of J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of UP and ors , (1990)4 SCC 27, wherein it was held as

under:-

"When an employee resigns his office, he formally relinquishes or withdraws from his office. It implies that he has taken a mental decision to sever his relationship with his employer and thereby put an end to the contract of service. As pointed out earlier just as an employer can terminate the services of his employee under the contract, so also an employee can inform his employer that he does not desire to serve him any more. Albeit, the employee would have to give notice of his intention to snap the existing relationship to enable the employer to make alternative arrangements so that his work does not suffer. The period of notice will depend on the period prescribed by the terms of employment and if no such period is prescribed, a reasonable time must be given before the relationship is determined. If an employee is not permitted by the terms of his contract to determine the relationship of master and servant, such an employment may be branded as bonded labour. That is why in Central Inland Water Transport Corporaion v. Brojo NaTH Gangly this court observed as under: SCC p.228 para 111)

"By entering into a contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would, however, normally require to be accepted by the employer in order to be effective."

5. Respondents while rejecting the request of the petitioner have passed the following order:-

Directorate General of Medical Services(Army)
Adjutant General's Branchy
'L' Block, Army Headquarters
New Delhi-110001

66797/PR&R/AV/2000/DGMS-IA 04 Sept 2000
153 General Hospital
C/o 56 APO

RESIGNATION ; MAJOR A VERMA (MR-7145)

1. Reference your letter No.117/2/M-1 dated 28 Apr 2000 addressed to ADGAFMS(MR).
2. Application dated 15 Apr 2000, seeking resignation from service in respect of Major A Verma (MR-7145) Cl Spl (Med) &RPO of HAMRC C/o 153 GH has been considered and rejected by the competent authority.
3. The concerned officer may be informed accordingly.

Sd/-
 (CL Khaitan)
 CSO
 DDMS-1A
 For DGMS(Army).....”

6. Thereafter, as noticed above, the petitioner filed a statutory complaint before the Central Government, which complaint stands also rejected vide order dt. 14th of March'02. The said order passed by the Under Secretary to the Government of India is also being reproduced below:-

“..... No.15(10)/2002/D(Med)
 Government of India
 Ministry of Defence
 New Delhi, the 14th March, 2002.

Order

Central Government, after considering the Statutory Complaint dated 24.03.2001 submitted by Maj Abhiram Verma (MR-7145) against rejection of his application seeking resignation from service, hereby reject the same as rejection of the officer's application for resignation from service, ordered by the DGMS(Army) vide letter No.66797/PR&R/AV/2000/DGMS-1A dated 04 September, 2000, is in order and in consonance with the criteria for acceptance of request for premature retirement/resignation of Defence Service officers, as laid down by the Government of India, Ministry of Defence. There is no injustice done to the officer and the complaint is devoid of substance and merits rejection.

By order and on behalf of President of India

Sd/-
 (RC Raturi)
 Under Secretary to the Government of India.....”

7. The Directorate General of Medical Services (Army) while considering the request of the petitioner has not given any reason whatsoever for rejection and same is the case with the order passed by the Central Government noticed above. While rejecting the claim of the petitioner the said authorities should have passed a speaking order by giving reasons.

8. A Division Bench of Delhi High Court in the case of Major Rahul Shukla v. Union of India and ors, Civil Writ No. 770 of 1995 decided on 9th of Aug'95, while considering a similar question of law whether the request for resignation from service can be rejected on the ground of shortage of Medicine Specialists in the army has observed as under:-

“Assuming that the right of an army personnel to resign from his commission in army may not be so wide and absolute as it may be in civil services, yet the authorities in the army are bound to follow the regulations of the army and they have to play within the four corners laid down thereby subject to provision of law. A reading of the several provisions of that Section of the Army Manual which deals with the removal, resignation and retirement of army personnel, specially the provisions which we have quoted hereinabove, in our opinion, leads to a few inferences. The applications for voluntary retirement or resignation though dealt with on similar footing do not in fact deserve so. While an application seeking voluntary retirement is fettered by several riders and discretion lies with competent authority to accept or not to accept the prayer, a prayer for resignation has to be dealt with on different footing as the discretionary power vested in the authorities taking decision on application for resignation is limited and circumscribed.”

An application for resignation may be rejected if it is not based on adequate and justifiable reasons. The over-riding consideration is whether the officer's continuance in service for a specific period is necessary to meet exigencies in a service and alternative arrangements cannot be made. Even in such a case the application for resignation cannot be reject. It can only be held in abeyance.”

9. In the case in hand, respondents have not given any cogent and convincing reasons for rejecting the application of the petitioner for resignation. An application for resignation cannot be rejected when it is based on adequate and justifiable reasons. It can be kept in abeyance till an alternate arrangement is made. In the instant case, the petitioner moved the application for resignation on 15th of April, 2000, which was rejected on 4th of Sept'2000. Thereafter the statutory complaint was filed by the petitioner on 24th of March'01, the same was decided on 14th of March'02. During this period, the respondents should have made an alternate arrangement if the services of the petitioner were required. The plea taken by respondents that the resignation is not being accepted on the ground that there is shortage of medical officers is belied by their own circular dated 11th of

July'2000, placed on record as Annexure A.1 to the rejoinder filed by the petitioner. In para 3 of the said circular it has been mentioned as under:-

"3. It is intimated that the number of specialist officers is far in excess of authorization of specialist pool resulting in the back log of approx 4-5 years."

10. From the above said circular, it is crystal clear that the Specialist Officers in pool are in excess with them. Therefore, the respondents have rejected the resignation of the petitioner without considering their own circular, referred to above.

11. For the reasons mentioned above, this petition is allowed. Orders impugned dated 4th of Sept'2000, passed by respondent No.2 and 14th of March'02, passed by the Under Secretary to the Government of India, rejecting the request of the petitioner for resignation are quashed. Respondents are directed to consider the case of the petitioner for resignation afresh, with sympathy and compassion and pass an order within a period of three months from the date of receipt of a copy of this order.

No order as to cost.