

## Surendra Kumar Vs Union of India and Others

**Court:** Madhya Pradesh High Court (Gwalior Bench)

**Date of Decision:** May 1, 2013

**Hon'ble Judges:** Sujoy Paul, J

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

Sujoy Paul, J.

This writ petition is filed by the petitioner, who was working as Constable, General Duty (GD) in Central Reserve Police Force (CRPF). The petitioner was allotted Constable No. 065225851 in CRPF and was working in the 78 Bn. of the said force. While working

in CRPF, the petitioner intended to face a selection for the post of Sub-Inspector (Direct Entry) in Border Security Force (BSF). It is the case of

the petitioner that he obtained permission from CRPF and submitted his candidature before BSF for the said post. The petitioner belongs to SC

category. The petitioner was selected on the post of Sub-Inspector (DE) in BSF and an offer of appointment dated 17/01/2012 was issued in

favour of the petitioner. The petitioner was directed to join BSF at Bangalore on 21/02/2013 with further stipulation in the offer of appointment

that this order will stand automatically cancelled, if petitioner fails to submit his joining on the aforesaid date. The petitioner submitted his request

for relieving on 20/02/2012 Annexure-P/3. He obtained character certificate on 29/02/2012 and the final technical resignation was accepted on

09/03/2012 Annexure-P/7. On 02/03/2012, petitioner submitted an application Annexure-P/8, before B.S.F. Authorities (respondent No. 4) with

a request to extend the jointing time or permit him to join the STC training in some other batch. It is stated that this request was sent by fax and

thereafter the petitioner was confined to bed because he was suffering from Jaundice. By placing reliance on the said report and certificate

Annexure-P/10, Shri D.K. Katare learned counsel for the petitioner submits that petitioner was confined to bed between 14/03/2012 to

02/05/2012. Petitioner after recovery from the aforesaid ailment, on 04/05/2012 submitted representations for permitting him to join the BSF.

These representations Annexure-P/11 and Annexure-P/12 could not fetch any result. This petition is filed with the prayer that the respondent-

B.S.F. in the peculiar facts and circumstances of this case, be directed to permit the petitioner to enjoy the fruits of offer of appointment order

dated 17/01/2012. In alternative, it is prayed that if petitioner's offer of appointment as Sub-Inspector in BSF is not made, he be allowed to join

on the post of Constable (GD) in C.R.P.F.

2. Shri Katare learned counsel for the petitioner took pains to submit that the respondents-CRPF committed an error in belatedly accepting the

resignation of the petitioner and therefore, petitioner suffered and could not join at B.S.F. office, Bangalore on 21/02/2012. He submits that

petitioner cannot be blamed for delay in any manner. Criticizing the inaction of the BSF in not responding the petitioner's representations for

extension of time, Shri Katare submits that the respondents should have taken a lenient view in the facts and circumstances of the case.

3. Per Contra, Shri Nitin Agrawal learned counsel for the other side opposed the relief claimed by the petitioner. It is stated by Shri Agrawal that a

bare perusal of the office order dated 08/03/2012 Annexure-P/7 shows that petitioner himself submitted the technical resignation on 29/02/2013,

which was accepted after fulfilling the necessary formalities on 08/03/2012. He submits that this type of conduct of the petitioner itself shows that

delay is not on the part of C.R.P.F. but it is on the part of petitioner himself. In the offer of appointment, the date on which joining should have

been submitted was mentioned as 21/02/2012, but petitioner submitted the resignation after the said date on 29/02/2012, hence, by no stretch of

imagination, it can be said that C.R.P.F. is at fault in any manner. Apart from this, as per condition 11 of the offer of appointment, the offer of

appointment stood automatically cancelled on non-joining of the petitioner on 21/02/2012 and therefore, there was no question to entertain his

application for extension of time. The BSF has not committed any error in not accepting the same. Shri Nitin Agrawal by placing reliance on rule

26 Central Civil Services (Pension) Rules, stated that once resignation is accepted, the services rendered earlier stood forfeited. The petitioner

cannot be permitted to join back in C.R.P.F. once his resignation is accepted. He submits that neither C.R.P.F. nor B.S.F. has committed any

error of law and the entire situation is creation of petitioner himself.

4. I have heard rival contentions of the parties at par and perused the record.

5. The first question whether there is any delay on the part of C.R.P.F. which deprived the petitioner to join on 17/02/2012. In my opinion, the

petitioner himself is to be blamed for the same. The offer of appointment in uncertain terms makes it clear that petitioner was required to join at

Bangalore on 17/02/2013. Petitioner himself tendered resignation on 28/02/2012 i.e. after the date of joining. The said resignation was accepted

on 08/03/2012. It is a matter of common knowledge that after submission of resignation, department is required to fulfill certain formalities. After

receiving resignation, various factors are required to be taken into account by the employer. Thus, I am unable to hold that there was any undue

delay on the part of the C.R.P.F. in accepting the resignation of the petitioner. In fact, petitioner caused delay in tendering the resignation. So far

the action of BSF is concerned, in my opinion, no fault can be found in the action of BSF also. Petitioner received the offer of appointment, which

contains a specific condition of joining on 21/02/2012 with further condition that non-joining will result into automatic cancellation of offer of offer

of appointment. Yet, petitioner did not prefer any representation before the said date to the B.S.F. authority seeking extension. He preferred the

application on 02/03/2012 Annexure-P/8, but by that time, the appointment stood automatically cancelled. It can not be forgotten that B.S.F. is a

disciplined force and offer of appointment itself shows that candidates were required to undergo training. In disciplined force, one has to be very

particular regarding punctuality and discipline. Of late, petitioner preferred a representation Annexure-P/11 dated 04/05/2012 to the B.S.F.

authorities to permit him to join in the next course. The stand of Shri Nitin Agrawal is that this representation and representation Annexure-P/13

dated 18/06/2012 are not required to be decided because offer of appointment stood cancelled. Shri Agrawal took further stand as per Rule 26 of

Pension Rules, the C.R.P.F. also cannot permit him to join back.

6. In my opinion, the B.S.F. by order dated 22/08/2012 has cancelled the offer of appointment and assigned reason in it. No fault can be found in

this order Annexure-P/15. Although, legally and technically, there is no flaw in the action of B.S.F. and C.R.P.F. yet it cannot be forgotten that

petitioner has lost job from both the places. C.R.P.F. accepted his resignation and B.S.F. did not permit him to join. Hence, he is at no men"s

land. He was suffering from Jaundice is also not in dispute. An anomalous situation is there for the petitioner. Rule 26(4) of the Pension Rules reads

as under:-

(4) 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 is allowed

to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

In the opinion of this Court, the integrity, efficiency or conduct of the petitioner is not of a nature which deprives him from making prayer of

withdrawal of his resignation. The material change in the circumstances because of which he was not permitted to join at B.S.F. is sufficient to seek

withdrawal of resignation. However, I am conscious of the facts that under Rule 26(4)(iii), there is a time limit prescribed for undertaking the

aforesaid exercise of withdrawal of resignation. However, Rule 88 of the Pension Rules gives power to the Ministry or department of the

Government to relax any provision of the rules. This power of relaxation can be exercised in cases where undue hardship is to be caused to an

employee. In the peculiar facts and circumstances of this case, in my opinion, there is no allegation about integrity, efficiency or conduct of the

petitioner with regard to the question of resignation and on the basis of said events, which took place thereafter. In this situation, I deem it proper

to permit the petitioner to prefer an appropriate application for permitting him to withdraw the resignation and submit it before the competent

Ministry or department of the Government under the Pension rules. In other words, since petitioner has not chosen to submit any appropriate

application for withdrawal of his resignation before the competent authority, the petitioner may prefer such application before the competent

authority. I am only inclined to direct that if such application is preferred, the Ministry or department of the Government will deal with it with

compassion and in a humanitarian manner in accordance with law. The decision on such application be taken and communicated to petitioner in 90

days. I find no flaw in the action of the B.S.F. in passing the impugned order Annexure-P/15.

Petition is disposed of with the aforesaid directions/observations. No costs.