



2025:DHC:8315-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13289/2023**
BIRANDER SINGH EX DCPetitioner

Through: Mr. Md. Naushad Alam, Adv.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Vijay Joshi, CGSC

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **17.09.2025**

C. HARI SHANKAR, J.

1. The petitioner joined the Border Security Force¹ as Platoon Commander (DE) on 9 April 1990. Having served the BSF for over 33 years, the petitioner submitted an application on 31 January 2023 seeking voluntary retirement. The application read thus:

“To
The Hon'ble President of India
Rashtrapati Bhawan
New Delhi
(Through Proper Channel)

Sub:- **VOLUNTARY RETIREMENT**

Respected Sir,

¹ “BSF” hereinafter



With due respect I, undersigned beg to say following few lines for your kind consideration and favourable action, please.

2. Sir, I joined the BSF on 9th April 1990 as a PC (DE) and I will complete approx 32 years and 9 months service as on 31.01.2023. My parents are no more and no any male member is available at my home. My wife always suffering several diseases. Due to the aforementioned reason I want to proceed on voluntary retirement on 31.01.2023.

3. It is therefore, earnestly requested to accept my voluntary retirement w.e.f. 31.01.2023 with all admissible pensionary benefits.

4. thanking you for this act of kindness in anticipation, please.

Yours faithfully

SD/-

30.10.2022

Birander Singh

Deputy Commnadant

IRLA No. 40904351

165 Bn BSF

I/Nagar, Jammu (J & K)”

2. The voluntary retirement was, therefore, to take effect on 31 January 2023.

3. It is a conceded position between learned Counsels that the petitioner was governed by the Central Civil Services (Pension) Rules, 2021². Rule 43³ of the CCS (Pension) Rules deals with the right to

² “CCS (Pension) Rules”, hereinafter

³ **43. Retirement on completion of twenty years' qualifying service. –**

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service and in the case of such retirement the Government servant shall be entitled to a retiring pension calculated in accordance with rule 44:

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.



seek voluntary retirement. Rule 43(6) permits a government servant to withdraw the notice of voluntary retirement only with the specific approval of the authority who sanctions voluntary retirement. The proviso to rule 43(6) requires the notice of withdrawal to be made not less than 15 days before the intended date of voluntary retirement.

4. We may note, here, that the petitioner was required by the respondent, at the time of applying for voluntary retirement, to submit an undertaking that he would not withdraw his application for voluntary retirement. A certificate to that effect was submitted by the petitioner which reads, thus:

“UNDERTAKING CERTIFICATE

I, Birander Singh, Deputy Commandant (IRLA No. 40904351) of 165 Bn BSF, have tendered the notice of voluntary retirement w.e.f. 31/01/2023 due to wife sickness. I, do hereby undertake that I will not withdraw the notice of voluntary retirement tendered by me under any circumstances.

Place: Indreshwar Nagar (J&K)
Dated, the 30 Oct'2022

(Birander Singh)
IRLA No. 40904351
Deputy Commandant
165 Bn BSF
Indreshwar Nagar
Jammu (J&K)”

5. The application for voluntary retirement was accepted by the competent authority of the respondents on 3 January 2023.

(6) Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made not less than fifteen days before the intended date of voluntary retirement.



2025:DHC:8315-DB



6. The voluntary retirement as applied was to take effect from 31 January 2023. The petitioner applied, on 10 January 2023 for permission to withdraw his request for voluntary retirement. The application read thus:

“To

The Hon'ble President of India
Rashtrapati Bhawan
New Delhi
(Through proper channel)

Sub: **WITHDRAWAL OF NOTICE OF
VOLUNTARY RETIREMENT**

Hon'ble Sir,

With due respect humble submission, I Birander Singh, Deputy Commandant (IRLA No.40904351) serving in 165 Battalion Border Security Force, Indreshwar Nagar, Jammu (J&K) beg to state following lines for your consideration and favourable action please :-

2. That Sir, I was tendered notice for voluntary retirement from service w.e.f 31/01/2023 due to some domestic problem, which has been accepted by GOI. Ministry of Home Affairs (Pers-II) UO No.A-12011/2020/Pers-III CF-3513096 dated 03/01/2023 and FHQ BSF (Pers Dte: Pers Sec) L/No.99-144 dated 04/01/2023.

3. That Sir, due to some domestic circumstances and my personal problem, I do not want to proceed on voluntary retirement from service and I would like to continue my service in Border Security Force ahead. In this regard, I intend to withdraw my notice of voluntary retirement from service, please.

4. Keeping in view of above, It is, therefore requested that kindly cancel order of my voluntary retirement from service w.e.f 31/01/2023 as accepted by CA please.

5. Thanking you for this act of kindness in anticipation, please

Yours faithfully,
Birander Singh
Deputy Commandant
IRLA No.40904351
165 Bn BSF
I/Nagar, Jammu (J&K)”



2025:DHC:8315-DB



7. Thus, the application for withdrawal of the request of voluntary retirement was made more than 15 days prior to the coming into effect of the voluntary retirement on 31 January 2023, as required by the proviso to Rule 43(6) of the CCS (Pension) Rules.

8. On 31 January 2023, the respondent, by the following signal, conveyed its rejection to the petitioner's request for withdrawing his application for voluntary retirement, on the ground that "time has already passed":

JMU015037

EMERGENCY

DTO: 311900

UC

NO. R/1115

FROM: HQ SPL DG (WC) CHD

TO: FTR HQ JAMMU

FROM ESTT DESK - III(.) WITHDRAWAL OF VRS FROM SERVICE W.E.F. 31.01.2023 - BSF(.) REF YOUR HQ L/NO. 836-39 DTD 25.01.2023 (.) CASE REGARDING WITHDRAWAL OF RESIGNATION FROM SERVICE W.E.F. 31.01.2023 IN RIO OFFICER PROCESSES ON FILE AND CA HAS ENDORSED REMARKS THAT "TIME HAS ALREADY PASSED" (.) IN VIEW OF THE REMARKS OF CA COMMA REQUEST TAKE ACTION AS PER FHQ L/NO. 99-144 DTD 04.01.2023

9. Aggrieved thereby, the petitioner approached this Court by means of WP (C) 4365/2023. By order dated 10 April 2023, a Coordinate Division Bench of this Court disposed of the aforementioned writ petition with the direction to the respondents to take a decision on the petitioner's application seeking withdrawal of the earlier request



for voluntary retirement within four weeks.

10. In compliance with the directions passed by this Court, the petitioner's request for withdrawing his application for voluntary retirement was rejected by the respondents by the following order dated 23 September 2023:

OFFICE OF THE COMMANDANT 165 BN BSF
INDRESHWAR NAGAR, JAMMU (JAMMU & KASHMIR)

Lno.2/3/23-Estt/VRS/BS/165Bn/2023/19163-69

Date 23 Sept 2023

“ORDER

REPRESENTATIONS OF SH BIRANDER SINGH, EX-DC
(IRLA NO.40904351) OF 165 BN BSF FOR RE-JOINING IN
BSF AFTER ACCEPTANCE OF NOTICE OF VOLUNTARY
RETIREMENT FROM SERVICE W.E.F. 31.01.2023

Whereas, Shri Birander Singh, Ex Deputy Commandant (IRLA No.40904351) of 165 Bn BSF tendered notice dated 30.10.2022 for acceptance of his voluntary retirement from service w.e.f. 31.01.2023 by giving an undertaking stating that under any circumstances he will not withdraw the notice for voluntary retirement tendered by him. Accordingly, case in this regard was forwarded for approval of competent authority and request of officer for Voluntary retirement w.e.f. 31.01.2023 with all pensionary benefits as admissible under section 43 of CCS (Pension) Rules, 2021 was accepted by competent authority vide order dated 03.01.2023.

2. Whereas, Shri Birander Singh, Ex Deputy Commandant had submitted an application dated 10.01.2023 for withdrawal of his notice for voluntary retirement w.e.f. 31.01.2023 in contrary to the undertaking given by him but same was not accepted. Accordingly, he relinquished the charge from the BSF and voluntarily retired from service w.e.f. 31.01.2023.

3. Thereafter, Shri Birander Singh, Ex Deputy Commandant had submitted representations dated 06.02.2023 and 14.03.2023 addressed to the DG BSF for re-employment in BSF. Accordingly, his application/request alongwith recommendation of Bn Comdt, SHQ DIG and IG Ftr HQ BSF Jammu was forwarded to MHA



through FHQ BSF, New Delhi for consideration.

4. Whereas, Shri Birander Singh, Ex Deputy Commandant during pending of decision on his application dated 06.02.2023 and 14.03.2023 filed a Writ Petition(C) No.4365/2023 titled Birander Singh (Ex-DC) V/s UOI & ORs before the Hon'ble High Court of Delhi seeking directions to accept his withdrawal of notice of VRS.

5. Whereas, respondents to Writ Petition 4365/2023 came up for hearing before Hon'ble High Court of Delhi and disposed of the case vide Order dated 10.04.2023 with the direction to take decision on the two representations dated 06.02.2023 and 14.03.2023 of the petitioner within four weeks from the date of order with a reasoned order and to communicate the decision taken to the petitioner within one week thereafter.

6. Whereas, the representations dated 06.02.2023 and 14.03.2023 has been examined in its entirety at MHA and conveyed that the officer voluntarily retired and relinquished the charge in BSF on 31.01.2023 and thus his notice for voluntary retirement not only got approved by the MHA but also got implemented w.e.f. 31.01.2023. Therefore, his representation to withdraw notice of voluntary retirement is rendered infructuous and irrelevant. Furthermore, there is no provision in CCS(Pension) Rules, 2021 which permits withdrawal of notice of voluntary retirement after the Officer has actually voluntarily retired and relinquished the charge from the BSF. Therefore, the Competent Authority at MHA has rejected two representations dated 06.02.2023 and 14.03.2023 of the petitioner being devoid of merit and beyond the purview of provisions under CCS (Pension) Rules 2021.

7. This order is issued in respectful compliance of Order dated 10.04.2023 passed by the Hon'ble High Court of Delhi in Writ Petition(C) No.4365/2023 titled Birander Singh (Ex-DC) V/s UOI & ORs.

(Tanjin Sonam)2IC
Offg Commandant
165 Bn BSF"

11. The petitioner has now re-approached this Court by means of the present writ petition, challenging the afore-extracted order dated 23 September 2023.



12. We have heard Mr. Mohd Naushad Alam, learned Counsel for the petitioner and Mr. Vijay Joshi, learned CGSC for the respondents at some length.

13. Mr. Naushad Alam submits that the case is covered by the judgment of the Supreme Court in *Balram Gupta v UOI*⁴, which was later followed by the Supreme Court in *J N Srivastava v UOI*⁵, and by the recent pronouncement of this Court in *Kande Mahender v UOI*⁶ which has relied on both these decisions. We may reproduce, paragraphs 14 to 20 of the decision in *Kande Mahender* thus:

“14. Having heard learned Counsels and applied ourselves to the material on record, we are unable to sustain the impugned decision, rejecting the petitioner’s request for permission to withdraw his earlier request for being permitted to voluntarily retire.

15. We may note, at the very outset, that Rule 43(6) of the CCS (Pension) Rules is obviously not applicable, as it applies to voluntary retirement under Rule 43, whereas the provision for voluntary retirement, applicable to the petitioner, was not Rule 43 of the CCS (Pension) Rules, but Rule 27 of the Coast Guard Rules.

16. The applicable Rules clearly support the case of the petitioner. While Rule 27A of the Coast Guard Rules, which deals with “resignation” contains an express proscription against withdrawal of an application for resignation, once it is accepted by the competent authority, there is a conspicuous absence, in Rule 27, of any such proscription. These provisions being allied and cognate provisions of one subordinate statute, the omission, by the framers of the Rules, to include, in Rule 27, a proscription against withdrawal, as contained in Rule 27A, has obviously to be regarded as deliberate.

⁴ 1987 SCC OnLine SC 682

⁵ (1998) 9 SCC 559

⁶ Judgment dated 27 August 2025 in WP (C) 2320/2025



17. In the absence of any such proscription against withdrawal of an application for voluntary retirement, before the period of voluntary retirement is to expire, even if the request stands accepted in the interregnum, the law that applies would be that declared in **Balram Gupta** and **J.N. Srivastava**. These decisions clearly permit withdrawal of an application for voluntary retirement even after it is accepted by the competent authority, provided that the request for withdrawal is made before the voluntary retirement is to take effect.

18. In the present case, the order dated 9 December 2024, of the Competent Authority, accepting the petitioner's request for voluntary retirement, specifically stipulated that the petitioner would stand voluntarily retired with effect from 31 January 2025. The application for withdrawal of the request for voluntary retirement was, therefore, moved before the voluntary retirement was to take effect, on 16 December 2024.

19. No doubt, in **Balram Gupta**, the Supreme Court further held that the application for voluntary retirement could be permitted to be withdrawn only if there was a material change in circumstances. The expression "material change in circumstances", is one which is incapable of precise definition. An indicator to its scope and ambit is, however, we found in the following passage from **Balram Gupta** itself:

"12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. *The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom.* If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but *the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set-up or arrangement was affected.* The administration has now taken a long time by its own



attitude to communicate the matter. For this the respondent is to blame and not the appellant.”

(Emphasis supplied)

In **Balram Gupta**, therefore, the mere fact that some of the colleagues of the employee concerned had dissuaded him from voluntary retiring was itself treated as sufficient change in circumstances to justify withdrawal of the request for voluntary retirement. The Supreme Court has, in the said decision, clearly advocated an expansive approach, in which there should be no “embargo on people’s choice”. The administration cannot, therefore, be rigid in its approach while examining whether the request for withdrawing the earlier application for voluntary retirement was, or was not, for good and valid reasons and based on a change in circumstances. The emphasis must be to prioritise the employee’s wish, provided the application is not made long after the request for voluntary retirement and, in the interregnum, the administration has not taken steps to change the administrative setup.

20. In the present case, the withdrawal of the request for voluntary retirement was motivated by the fact that, one week prior thereto i.e. on 4 December 2024, the petitioner had undergone an open heart surgery and had recovered therefrom. There was, therefore, a change in his health condition. Clearly, this constitutes “material change of circumstances” within the meaning of the law laid down in **Balram Gupta**.”

14. The issue is squarely covered by the decisions in **Balram Gupta** and **J N Srivastava** as well as our decision in **Kande Mahender**. The rules which were before the Supreme Court in **Balram Gupta** were *pari materia* to Rule 43 which is subject matter of consideration in the present case.

15. In that view of the matter, the opinion expressed by the respondents in the impugned order dated 23 September 2023, whereby the petitioner’s request for withdrawing voluntary retirement was rejected, to the effect that, once the voluntary retirement had been accepted, it could not be withdrawn, is clearly contrary to the law laid



down by the Supreme Court as well as Rule 43(6) of the CCS (Pension) Rules.

16. The only aspect that is required to be considered is, therefore, whether the tendering of the undertaking by the petitioner at the time of his applying for voluntary retirement would stand in his way.

17. We have queried of Mr. Vijay Joshi, learned CGSC as to whether there is any rule, regulation, instruction or any other statutory or executive justification for requiring such an undertaking to be provided by the petitioner at the time of applying for voluntary retirement. He is not able to draw our attention to any such rule, regulation or statutory document.

18. We are constrained, therefore, to arrive at the conclusion that the petitioner was compelled to tender the aforesaid undertaking if he had desired his application for voluntary retirement to be further processed.

19. Such an undertaking, for which there is no justification in any rule, regulation or statutory instruction, in our opinion, cannot operate as estoppel against the petitioner, insofar as his right to seek withdrawal of his notice of voluntary retirement is concerned. The petitioner's right to seek withdrawal of his notice of voluntary retirement is envisaged by Rule 43(6) of the CCS (Pension) Rules, the only two conditions which apply being that the withdrawal must be 15 days prior to the date from which the voluntary retirement would take



effect and that the withdrawal has to be with the approval of the concerned authority.

20. Needless to say and as the Supreme Court has held in **Balram Gupta**, the approval cannot be refused except on valid grounds. If there is a change in the circumstances, the employee would be entitled to seek withdrawal of his notice of voluntary retirement.

21. This Court has also noted in **Kande Mahender** that the concept of “change in circumstances” has been given an expansive interpretation in **Balram Gupta**. In the present case, the withdrawal was sought on the ground of domestic circumstances which had intervened between the petitioner’s request for voluntary retirement and his request to withdraw his application for voluntary retirement.

22. Given the approach adopted by the Supreme Court in **Balram Gupta** and **J N Srivastava**, which has been followed by this Court in **Kande Mahender**, we are of the opinion that the respondents’ decision to refuse the petitioner’s request for withdrawal of his voluntary retirement is not sustainable in law.

23. Accordingly, the impugned order dated 23 September 2023 is quashed and set aside. The request for withdrawing the application for voluntary retirement shall be treated as having been accepted by the respondents.

24. The petitioner would, therefore, be entitled to be reinstated in



2025:DHC:8315-DB



service with all consequential benefits, including continuity in service but without any back wages.

25. The direction for reinstating the petitioner in service will take place after the petitioner has refunded the amount that has been paid to him by way of retiral benefits consequent to voluntary retirement.

26. The writ petition is disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

SEPTEMBER 17, 2025/rjd