

(2006) 07 DEL CK 0055
In the Delhi High Court
Case No : WP (C) . No. 1450 of 2001

Capt. Raj Kumar Singhal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Air Force Rules, 1969 — Rule 15(2), 15(2), 18, 74
Constitution of India, 1950 — Article 226

Citation : (2006) 92 DRJ 383

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : J.S. Manhans, for the Appellant; Dalip Mehra, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—The petitioner has in the petition under Article 226 of the Constitution of India prayed for quashing of the order of discharge from service dated 20.4.1990 passed against the petitioner being arbitrary, illegal and unjustified and directing the reinstatement of the petitioner into service with all consequential benefits including seniority in service. The case of the petitioner, as set out in the petition is that he was recruited into the Indian Air Force on 6.1.1982 as airman in driver's trade. The petitioner was thereafter promoted to the rank of corporal on 5.1.1986.

2. On 14.8.1984 the respondents had issued a policy letter for compulsory discharge of persons, who were habitual offenders, on the ground that their services were no longer required. It is submitted that the petitioner was issued a show cause notice dated 4.10.1989 and on the basis of the said show cause notice the petitioner was compulsorily retired prematurely and discharge certificate dated 21.10.1993 was issued.

3. The petitioner has further stated in the writ petition that he was forced to file earlier a writ petition No. 5292/1993 before the High Court of Punjab and

Haryana. The Punjab and Haryana High Court had passed an Order dated 20.5.1995 directing the respondents to supply relevant documents to the petitioner. He further goes on to state that although the respondents have not supplied the relevant documents, he managed to get a copy of show cause notice dated 4.10.1989 and has filed the present petition.

4. Learned Counsel for the petitioner has submitted that the discharge certificate dated 21.10.1993 is bad in law and the essential features of the policy letter dated 14.8.1984 have not been complied with. It is submitted that as per the policy letter, a person below the officer rank can be declared a habitual offender if there are overall combined total of 6 black and red ink entries for similar offence in the service recorded during past 8 years service. As per the petitioner, the number of punishments shown in the show cause notice are not sufficient to satisfy the criteria to declare the petitioner as a habitual offender.

5. It is the case of the petitioner that there are only three red ink entries and that even out of these two punishments were given on 8.3.1989 which are non est as two separate punishments have been awarded for separate offences in a common trial held on 8.3.1989, contrary to Rule 74 of the Air Force Rules 1969.

6. Rule 74 mandates that there will be one punishment for all the offences and not separate punishment for each separate offence.

7. Learned Counsel for the respondents has contended that submission of the counsel for the petitioner is factually incorrect. The petitioner is a habitual offender; prior to the show cause notice dated 4.10.1989 a warning letter dated 22.12.1987 was issued to the petitioner, which is reproduced below:

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Extn... 2001

17U/O 465/1/P1 22 DEC 87 CT/. N. HEAD QUARTERS

WARNING : HABITUAL OFFENDERS

1. In accordance with the procedure laid down vide Air HQ letter No. Air/HQ/C 23406/685/P5 dated 14 Aug 84, your service documents were scrutinised by a Board of Officers to examine the punishment entries in your conduct sheet.

2. It has been observed that you have been awarded FOUR Red Ink entries and THREE Black Ink entries.

3. You are hereby warned that another punishment entry in your conduct sheet (either Red or Black) will result in your discharge from Air Force under the provision of Rules 15(2)(g)(ii) of the Air Force Rules 1960.

(PD Badoni) Group Captain 626384 CPL RAJKUMAR Commanding Officer MTD
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8. It is submitted that in spite of the warning issued in terms of letter dated

14.8.1984, there was absolutely no change in the attitude of the petitioner and the respondents were forced to issue a show cause notice on 4.10.1989. In the show cause notice it was categorically mentioned that in the total 6 years and 11 months of service, the petitioner has been tried and punished on as many as 7 occasions, out of which 4 entries were red ink entries. The copy of the conduct-sheet of the petitioner was also sent along with the show cause notice to the petitioner. It is stated in the show cause notice that the petitioner was warned by the commanding officer in writing on 22.12.1987, that the petitioner should desist from the acts of indiscipline, as any further addition of a punishment entry would result in initiating action for discharge. That in spite of the warning, the petitioner had again indulged in the acts of indiscipline and was awarded punishment. Petitioner was granted 10 days time to reply to the show cause notice. The extract of the show cause notice dated 4.10.1989 is reproduced:

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CONFIDENTIAL ANNEXURE-C Telephone: 32066/550 HQ South Western Air Command Indian Air Force Jodhpur - 342 001. SWAC/C 3401/18/6/P1

626384 Cap. Rajkumar MTD 769 SU AF C/O.56 APO SHOW CAUSE NOTICE

1. WHEREAS, you were enrolled in the IAF on 06 Jan 1981 and assigned the trade of MTD.

2. AND WHEREAS, During your total service of 6 years and 11 months in the Air Force you have been summarily tried and punished on as many as seven occasions out of which four are red ink entries (Copy of Conduct Sheet attached as Appendix "A" to this SCN).

3. AND WHEREAS, you were duly warned by Commanding Officer, 17 SU AF in writing on 22 Dec 87 counselling you to desist from act of indiscipline as any further addition of punishment entry would result in initiating action for your discharge from service (Copy of said warning attached as Appendix "B", to this Show Cause Notice).

4. AND WHEREAS, in spite of said written warning you have again indulged in acts of indiscipline and have been awarded punishments as shown below:

(a) awarded "Reproduced" by Wg. Cdr. VVB Rao, CO, 17 SU AF on 8 Mar 89 for being absented from 1800 h on 11 Nov 88" (Total absence 23 hours and 59 minutes)

(b) Awarded "Severe Reprimand" by Wg. Cdr. VVB Rao CO, 17 SU AF on 8 Mar 89 for being absented yourself from duties from 1800 h on 30 Jan 89 to 0900 h on 31 Jan 89 while on duty MTD (Total absence 15 hours).

(c) Awarded "Reprimand" by Wg Cdr. SR Vasavada, CO, 769 SU AF on 03 Aug 89 at Baroda on 28 July 89 (i) Found consumed alcoholic liquor while on duty at 0840 h on 28 July 89. (ii) Found in the state of intoxication while on duty at 0840 h on 28 Jul 8 when detained/as duty MTD for Ration run.

5. AND WHEREAS, perusal of your conduct sheet indicates that you are a poor material airman and not amenable to service discipline.

6. NOW Therefore, you are to show cause why you should not be discharged from service under Rule 15(2)(g)(ii) Air Force Rules, 1969. Your reply to this Show Cause Notice is to be submitted to your Commanding Officer within 10 days of the receipt of this Show Cause Notice failing which it shall be assumed that you have nothing to urge in your defense against your discharge from service and further action would be taken accordingly.

(SV Lagad)

Wg Cdr

CPSO

For SOC-in-C

Encl : As stated

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9. Learned Counsel for the respondents further contended that in spite of repeated warnings and counselling by the commanding officer, the petitioner continued with his acts of indiscipline which included absence from duty or found in state of intoxication while on duty. Due to the behavior under the Policy of habitual offenders circulated on 14.8.1984 the services of the petitioner warranted the action of his discharge. The respondents have filed along with a counter affidavit, a copy of the conduct-sheet of the petitioner which shows that the petitioner has been awarded 4 red entries and 6 black entries. Mr.Dilip Mehra, learned Counsel for the respondents contended that although the policy dated 14.8.1984 are only guidelines and the petitioner has been discharged under Rule 15(2)(g)(ii) of the Air Force Rules, 1969, which reads as under:

15. Authorities empowered to authorise discharge. - (1) & 2. xxxx

TABLE Class Cause Competent Special discharge authority Instructions to authorise discharge _____

1. 2. 3. 4. _____
_____ Person enrolled (a) to xxxxxx xxxxxx under the Act (F) xxxxxxxx who have attested. (g) His services no longer required:

(i) xxxx (ii) Unsuitable Air Officer i/c for retention Administration in the Air Force _____

10. Learned Counsel for the respondents further submitted that at no point of

time the petitioner ever contested the punishment so awarded from time to time. It was argued that the case of the petitioner is squarely covered, as per the policy letter dated 14.8.1984; and even assuming without admitting that Rule 74 has been violated, still the petitioner has been awarded total nine punishments, red and black combined.

11. We have heard learned Counsel for the parties and have given our thoughtful consideration as well as perused the record. The counsel for the respondents has taken us through the policy. The entire aim and object of the policy is to deal firmly with the habitual offenders. The policy is based on a study conducted by the Institute of defense Management regarding the existence of habitual offenders among airmen. As per the study the effect of repetitive indiscipline has a serious adverse effect on the general morale and discipline, especially on the young airman joining various Units from the training centres.

12. The first contention of the petitioner, that as per the show cause notice only three red ink entries have been shown, is factually incorrect.

13. Para 2 of the show cause notice mentions that in the total service of six years and eleven months the petitioner was tried and punished on as many as seven occasions, out of which four are red ink entries. A copy of the conduct-sheet was annexed to the show cause notice. The show cause notice goes on to state further that in spite of written warning the petitioner again indulged in acts of indiscipline which included absence from duty on two occasions and was found in the state of intoxication while on duty. In the writ petition the petitioner has nowhere mentioned whether he had replied to the show cause notice or not. The petitioner in terms of the communication dated 27.9.1991 addressed to the Chief of Air Staff had requested the respondents for supply of four documents on the ground that he had misplaced all his documents; and even in that list he never requested for reply to the show cause notice. The only inference that can be drawn is that no reply to the show cause notice was given. The court cannot lose track of the fact that the main ethos of the policy letter dated 14.8.1984 was to weed out habitual offenders among the airmen, as they had an adverse effect on the general discipline and administration in the Air Force. The conduct-sheet which has been filed by the respondents, as Annexure R-1, clearly shows that the petitioner was completely indisciplined and despite warning letter dated 22.12.1987 he refused to make any amends. The acts of indiscipline of the petitioner are totally unbecoming of a member of the Armed Force. The respondents have followed the procedure which is required to be implemented, as per the policy of discharge. Petitioner was duly warned vide letter dated 22.12.1987 about the implications of his persisting in the acts of indiscipline and even one additional punishment would result in discharge from the Air Force under the provisions of Rule 15(2)(g)(ii) of the Air Force Rule, 1969. The petitioner was thereafter issued a show cause notice and was discharged from service. Having perused the conduct-sheet of the petitioner, the warning letter dated 22.12.1987 and show cause notice dated 4.10.1989, we find that the

respondents completely followed the procedure, as per the policy dated 14.8.1984 for discharge of the petitioner. The Hon'ble Supreme Court of India in the case of Union of India and others Vs. Corporal A.K. Bakshi and another, has held that the basic idea underlying the Policy for Discharge is that recurring nature of punishments for misconduct imposed on an airman renders him unsuitable for further retention in the Air Force. Suitability for retention in the Air Force has to be determined on the basis of record of service. Relevant portion of the same reads as under:

The punishments referred to in the Policy for Discharge are punishments that have been imposed for misconduct under the relevant provisions of the Act and the Rules. The Policy for Discharge envisages that in cases where an airman has been awarded such punishments six times, he is to be treated as a habitual offender and action for his discharge from service should be taken against him under Rule 15(2)(g)(ii) of the Rules. This action for discharge is not by way of punishment for the misconducts for which he has already been punished. The basic idea underlying the Policy for Discharge is that recurring nature of punishments for misconduct imposed on an airman renders him unsuitable for further retention in the Air Force. Suitability for retention in the Air Force has to be determined on the basis of record of service. The punishments that have been imposed earlier being part of the record of service have to be taken into consideration for the purpose of deciding whether such person is suitable for retention in the Air Force. The discharge in such circumstances is, Therefore, discharge falling under Rule 15(2)(g)(ii) and it cannot be held to be termination of service by way of punishment for misconduct falling under Rule 18 of the Rules.

14. The plea raised by the learned Counsel for the petitioner that there is violation of Rule 74 of the Air Force Rules 1969 as two separate punishments have been awarded for separate offences in a common trial held on 8.3.1989 is of no help to the petitioner as in all ten punishments have been awarded to the petitioner as per the conduct sheet annexed as Annexure-R.1.

15. The plea taken by the respondents, thus is not without merit. The petitioner himself has been responsible for his acts of misconduct, has been awarded punishments and found to be unsuitable for retention in the Indian Air Force. We find no infirmity in the order of discharge dated 21.10.1993.

16. In view of above, there is no merit in the petition and the same is accordingly dismissed, leaving the parties to bear their own costs.