

(2003) 12 DEL CK 0019
In the Delhi High Court
Case No : C.W.P. No. 1446 of 1997

Cpt. Satyvir Met. Asstt.

APPELLANT

Vs

Chief of Air Staff

RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:

Air Force Rules, 1969 — Rule 24
Constitution of India, 1950 — Article 226

Citation : (2004) 110 DLT 246 : (2004) 74 DRJ 426 : (2004) 3 SLJ 24

Hon'ble Judges : V.K. Jain, J;Ramesh Chand Jain, J

Bench : Division Bench

Advocate : Narendar Kaushik, S.M. Dala, amices Curiae and Party-in-Person, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Allowed

Judgement

Vijender Jain, J.—Mr. S.M. Dalal, amices Curiae is discharged from appearing appearing in this matter as Mr. Narender Kaushik, Advocate states that he is the Counsel engaged by the petitioner. Petitioner who is present in Court also states that he would like the matter to be argued by Mr. Narender Kaushik.

2. Rule D.B.

The petitioner has filed this writ petition inter alias praying to quash the charge sheet dated 16th July, 1996 and 31st December, 1996 and subsequent proceedings taken against the petitioner. This Court on 25th September, 2003 noted that the petitioner was enrolled in Air Force as Met. Assistant on 26th March, 1984 and thereafter he was placed in low medical category. On 16th July, 1996, he was alleged to have reported late on duty for which he was charged. He filed his redress of grievances which was rejected. However, it was contended by the petitioner that he was given excuse duty on this day. In support of his submission, he has filed Annexure VII (at page 30) which is a photocopy of the certificate of excuse duty by the Wing Commander Gurbir Singh, Medical Officer. However, the petitioner was given a show cause notice dated 21st November,

1996 which he replied. Thereafter, it is the case of the petitioner that he was granted leave from 9th December, 1996 to 15th December, 1996 but was charged with two charges for joining the duty late. He was awarded severe reprimand by the order dated 31st December, 1996. The petitioner has challenged these two punishments and also sought a direction to the respondent to discharge him from service with disability.

3. It was contended on behalf of the petitioner that the punishments were awarded in total disregard of the procedural safeguards provided under Rule 24 of the Air Force Rules and, Therefore, the same were unsustainable. It was further contended that if these two punishments were excluded from consideration, the petitioner could not have been discharged under the policy related to discharge of habitual offenders.

4. The respondent has filed a detailed counter affidavit. Ms. Barkha Babar, learned Counsel appearing for the respondent has contended that the requirements of Rule 24 was complied with. However, the Court on 25th September, 2003 noted that the affidavit does not specifically undertake whether the averments made were borne out from any record related to any summary proceedings against the petitioner. At this stage, Counsel for the respondent sought for an adjournment and filed an additional affidavit.

5. Ms. Barkha Babbar, learned Counsel appearing for the respondent has contended that affidavit has specifically mentioned that Rule 24 was applicable to the petitioner, however, due procedure was followed and medical certificate of the Doctor was not brought to the notice of the respondent.

6. This Court on 31st October, 2003 took into consideration the additional affidavit filed by the respondent and in view of the records being not available with the respondent the Court directed the respondent to file the affidavits of Udaibhan Singh and Wing Commander Gurbir Singh. The affidavits of Udaibhan Singh and C.N. Ghosh have been filed. In para No. 3 of the affidavit of Udaibhan Singh, he has taken the stand that the petitioner was permitted to come late at 2100 hrs. instead of 1930 hrs. for the night shift duty on 16th July, 1996, whereas the affidavit of retired Air Commodore C.N. Ghosh has stated that the proceedings under Rule 24 were carried out and all the safeguards mentioned in Rule 24 of Air Force Rules, 1969 were observed. He has further mentioned that the petitioner was asked to produce documentary evidence in his favor against the charges framed dated 16th July, 1996 and the petitioner did not produce any documentary evidence in his defense nor did he inform that he had any excuse duty on that particular day. Record of proceedings are stated to have been destroyed. Normally, the original record of the proceedings conducted under Rule 24 are to be maintained by the respondent though it has been contended by the respondent that these proceedings are in the nature of oral proceedings and no record is to be maintained. When an officer or a person against whom an action is to be taken, principle of natural justice demand that the record of such proceedings must always be maintained. Even if we assume that the proceedings

were oral in nature but in view of the affidavits which have been filed on record, the stand taken in the affidavit of Air Commodore C.N. Ghosh is inconsistent with the affidavit of Udaibhan Singh. Udaibhan Singh who was the immediate superior officer of the respondent has specifically stated that he has granted permission to the petitioner to come late for duty on 16th July, 1996. No affidavit of Wing Commander Gurbir Singh, Medical Officer in terms of the last order has been filed for which a request has been made by the Counsel for the respondent for more time. We cannot agree to this request as sufficient time has already been granted to the respondent. In view of the fact that Annexure VII at page 30, a certificate of Gurbir Singh has been filed by the petitioner and the same has not been controverted by the respondent and in view of Udaibhan Singh's affidavit, which specifically mentions that he was granted leave to come late, there is infringement of the right of the petitioner as he has been punished without being heard.

7. We, Therefore, quash the charge sheet dated 16th July, 1996 and subsequent proceedings including the punishments and order of discharge of the petitioner under habitual offenders category. In view of the quashing of the charge sheet and punishments, it will be open to the petitioner, after reinstatement, to apply to the respondent for his discharge with disability. The petition stands allowed in terms thereof. Rule is made absolute.