
(2007) 04 DEL CK 0210

In the Delhi High Court

Case No : Writ Petition (C) No. 1102 of 1999

Ex. AC U/T Singh B.J.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Air Force Rules, 1969 — Rule 15(2)

Citation : (2007) 04 DEL CK 0210

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : N.L. Bareja, for the Appellant; Anil Nag and Rajiv Ranjan Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—This writ petition calls in question an order passed by the Commanding Officer of the petitioner in exercise of his powers under Rule 15(2) (j) of the Air Force Rules, 1969 dismissing the petitioner from service on the grounds that he was unlikely to make an efficient airman. The petitioner was discharged from the service of Air Force while he was still undergoing training at Mechanical Training Institute, Air Force, Tambram, Chennai.

2. The factual matrix of the case giving rise to this writ petition is as follows.

3. The petitioner was enrolled in the Indian Air Force on 16.7.1996 and after he underwent basic training course, he was sent for technical trade training at Mechanical Training Institute, Tambram on 9.11.1996 and while he was undergoing training there, he is alleged to have committed various activities of indiscipline. During training at the end of Semester II, Term II the performance of the petitioner was found to be poor and his result for that examination was moderated. He failed in Semester III, Term I examination held on 23.3.1998 and was, Therefore, back phased from ATT-26 to ATT-27.

4. On 21.5.1998 the Commanding Officer of the petitioner gave a show cause

notice to the petitioner calling upon him to show cause within ten days why he should not be given Cease Training and discharge from the service for the reasons mentioned in the said show cause notice. The aforementioned show cause notice given to the petitioner reads as under:

1. Whereas you have been enrolled in the IAF at No. 2 Airmen Selection Centre, New Delhi on 16 Jul 96 and has been undergoing training at this Institute w.e.f. 09 Nov 96 in the trade of Eng Fit.

2. And Whereas, it has been observe with concern that your performance in the training was poor in examination conducted by TEB at the end of Semester II, Term II in which your exam result was moderated. You also failed in Semester III, Term I examination held on 23 Mar 98. As such you have been back-phased from ATT-26 to ATT-27 entry.

3. And whereas, it has been observed that you have overstayed leave granted to you on two occasions i.e. 22 Nov 97 and 17 Mar 98. On 13 Apr 98 you were also absent from Squadron without sufficient reason for all these acts of indiscipline you have been found guilty and awarded punishments. Over and above you are irregular in attending classes and have often exhibited indifferent attitude towards your superiors in complying with service discipline.

4. Now, Therefore, you are hereby called upon to show cause as to why you should not be given Cease Training and Discharge from the service for the reasons mentioned in paras 2 and 3 above. Your reply, if any, to the show cause notice is to reach the undersigned within 10 days from the date of receipt failing which, it will be presumed that you have nothing to urge in your defense.

5. The petitioner gave his reply to the above show cause notice on 28.5.1998 and the reply so given by him reads as under:

I have the honour to request that I wish to serve in IAF with full dedication and devotion. I regret for wrong deeds committed in the past days and I assure that it will not be repeated in future.

During second Sem Pt-II Test conducted by TEB I could not study and write in examination properly because I was suffering from cold and fever. I also could not report to MI Room due to the examinations. After written examination I appeared in practical and oral Test. Based upon that I was promoted for next Semester.

Subsequently, the III Sem Pt-I Test was conducted on 23 Mar 98.

Before the examination I went home on leave to see my ailing mother. When I returned, I did not concentrate on study as I was worried about my mother's sickness and I failed in examinations.

First time, I was AWL due to my admission in Govt. Hospital. I had been sick since TEB exam Sem-II Pt-II. On reaching home my health became poorer and I had to get admitted in Govt. Hospital. I have already produced Medical

Certificate in this regard.

Second time I was AWL due to my mother's sickness. That time I assured for grant of two days Exton of leave on telephone. I could not bring medical certificate of my mother's sickness and became punishable.

On 12th Apr 98 I went to Triputti. After return in the night I could not awake in the morning in time due to tiredness. I awakened at 0700 hand immediately went to the section. Therefore my absence was recorded for 1 hour and 45 minutes.

My main failure was going post office from section without sufficient reason. I went there to send telegram to my brother who is serving in Army at Punchh because I could not hear anything from him since a long. I taken this decision in hurry during my tea period. Suddenly when I saw you I get puzzled and gave all the wrong statements. For this offence I beg pardon.

I assure you that I will take appropriate decision and respect all the members of IAF so that I can become a skilled and able airman. When I see my family condition, this service can only be a grace for us.

Sir, due to the reasons mentioned above I want to serve in IAF with full dedication. Please given me an opportunity to serve with utmost dedication and devotion.

6. The petitioner was informed by his Commanding Officer on 10.6.1998 that his reply to the show cause notice was considered by him but it was found to be unsatisfactory for dropping the charges mentioned in the said show cause notice and the case was, Therefore, referred to Station Review Board (SRB). The Station Review Board, on 16.6.1998 gave its approval for cease training and discharge of the petitioner under Rule 15(2)(j), Chapter III of Air Force Rules, 1969 and consequent thereto, the petitioner was discharged from the service of Air Force w.e.f. 18.6.1998 vide discharge certificate signed by the Commanding Officer. The discharge certificate is at Page 32 of the paper book. Aggrieved by his discharge, the petitioner has filed this writ petition and has prayed for issuance of a writ of certiorari quashing the impugned order dated 17.6.1998 discharging the petitioner from service and to direct the respondents to reinstate him in service with all consequential benefits.

7. We have heard the learned Counsel for the parties and have also perused the record relating to the case placed before us.

8. The learned Counsel for the petitioner had argued that the competent authority who has passed the discharge order did not apply its mind to the facts of the case before approving the discharge of the petitioner from service. He took us through the proceedings of Unit/Station Review Board (MTI)(Annexure R-13 at Pages 98-99 of the paper book) and by reference to the same, he contended that recommendations by the flight commander and that by the squadron commander recommending for cease training and discharge of the petitioner were made on

the same date i.e. on 15.5.1998 and this according to the learned Counsel reflects non-application of mind on the part of squadron commander Mahesh Sharma in accepting the recommendations of the flight commander. The learned Counsel had further argued that the decision of the Unit Review Board was influenced by the presence of squadron leader Mahesh Sharma as member of the Unit Review Board as according to the learned Counsel, the said Mr. Mahesh Sharma had already accepted the recommendation of the flight commander made on 15.5.1998 for premature discharge of the petitioner from service.

9. Since the learned Counsel for the petitioner had laid emphasis during his arguments on the point of non-application of mind by the concerned authorities while discharging the petitioner from service, this Court directed the respondents to produce the relevant record including the order passed by the Commanding Officer but regrettably we were informed by the counsel appearing on behalf of the respondents that the relevant record relating to this case has already been destroyed. This, in our view, is a serious lapse on the part of the respondents who were expected to preserve the record of this case till the case was finally decided. We, Therefore, vide our order passed on 22.2.2007 directed the JAG (Air) and the Officer In-charge, Legal Cell to remain present in person on 5.3.2007 to explain the circumstances in which the relevant record of this case was destroyed. The JAG (Air) who was present in Court on that date could not give any valid Explanation for destroying the record of this case. He only mentioned that the record was destroyed at the unit level and undertook that in future necessary remedial steps shall be taken by the department to ensure that the record of legal cases pending in Court is not destroyed till the final disposal of such cases. Left with no option, we proceeded to hear and dispose of this petition on the basis of copies of the record filed by the parties Along with their pleadings as the correctness of the said record was not disputed by either of the parties.

10. We have carefully gone through the proceedings of Unit/Station Review Board, MTI (Annexure R-13 at Pages 98, 99 of the paper book), pleadings of the parties, show cause notice and reply thereto, Annexure P-7 and Annexure R-11 at Pages 58 and 96 of the paper book and on going through the same, we could not persuade ourselves to agree with the argument of the petitioner's learned Counsel that there was no application of mind by the concerned authorities while discharging the petitioner from Air Force service in exercise of its powers under Rule 15(2)(j) of Air Force Rules, 1969. In fact, the reply of the petitioner to the show cause notice, reproduced hereinabove would amply show admission on the part of the petitioner that he had committed several activities of indiscipline and had overstayed leave on three occasions while he was still on training. His service with Air Force as a trainee was for less than two years. Since during this short period of two years, the petitioner admittedly did activities amounting to indiscipline and had poor performance in examination, respondents were fully justified in invoking Rule 15(2)(j) of Air Force Rules, 1969 as they found that the petitioner was unlikely to make an efficient airman. We hardly find any ground to

interfere with the decision of the respondents in discharging the petitioner from service of Air Force on the ground that he was unlikely to make an efficient airman.

11. The learned Counsel for the petitioner had lastly argued that in case the performance of the petitioner during training was poor, the respondents were obliged to offer another trade in a lower group instead of dispensing with his services. He relied upon Clause 5 of the policy of the respondents relating to reclassification and remustering. It shall be necessary to refer to Clause 5 of the said policy relied upon by the petitioner and the same is reproduced herein below:

An airman u/t who fails to qualify as an AC, after completion of the normal period of training laid down for the trades in which he received training may be discharged from the service, but in exceptional cases with the consent of the airman the training period may be extended for a further period at the discretion of AOC-in-C HO TC Such an airman will be re-examined on completion of his extended period of training. Further failure will render him liable to discharge, but if he is considered suitable and vacancies exist he may be considered for another trade in a lower group provided the airman agrees for that group.

12. We have considered the above contention urged on behalf of the petitioner but we hardly find any merit in the same. The case of the petitioner does not fall under exceptional cases provided for in Clause 5 referred above and furthermore we are of the view that the petitioner could not claim as a matter of right that he must have been offered another trade in a lower group before dispensing with his services. Considering the conduct of the petitioner during the period of his training as borne out from his own reply to the show cause notice, we are of the view that no Constitutional, legal or statutory right of the petitioner has been violated by not offering him another trade in a lower group before dispensing with his services.

13. In view of the above, we do not find any merit in this writ petition which fails and is hereby dismissed, however, in the circumstances of the case, without any order as to costs.