

(2001) 03 DEL CK 0112
In the Delhi High Court
Case No : C.W.No. 671 of 1999

Ex. Cpl. Tejinder Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 27-03-2001

Acts Referred:

Air Force Rules, 1969 — Rule 15(2)

Citation : (2001) 03 DEL CK 0112

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. B.S. Saini, for the Appellant; Ms. Geeta Luthra, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukundakam Sharma, J.—The respondents have passed an order under the purported exercise of the powers under Rule 15 (2)(g)(ii) of the Air Force Rules, 1969, on 28.8.98 discharging the petitioner from service. The said order is under challenge in this writ petition.

2. The petitioner joined the Indian Air Force on 19.1.1988. A warning letter was issued to the petitioner on 11.3.97 bringing to his notice that his service documents revealed that there were a total of three entries of punishment of which one was of red ink and other two of black ink in his conduct sheet as on 8.3.1997. In the context of the aforesaid position, it was brought to his notice that in accordance with the prevalent policy, the airmen, who fall in any of the following categories would be treated as habitual offender and would be considered for discharge from service under Rule 15(2)(g)(ii) of the Air Force Rules, 1969 under the clause "his service no longer required/unsuitable for retention in the Air Force":-

(a) Total number of punishment entries six and above (including red & black ink entries)

Or

(b) Four red ink punishment entries.

Or

(c) Four punishment entries (red & black ink entries included) for repeated commission of any one specific type of offence.

The petitioner was further intimidated that he was on the threshold of falling in the category of habitual offender under para 2 (c) above i.e. four punishment entries. Therefore, the petitioner was cautioned and counseled to mend himself and desist from the acts of indiscipline and was also warned that addition of another punishment entry as required by the category of habitual offenders would render him liable for discharge from service.

3. After expiry of about 11 months thereafter, a show cause notice was issued to the petitioner asking him to show cause why he should not be discharged from service under the aforesaid provisions of Rule 15(2)(g)(ii) of the Air Force Rules, 1969. It was stated in the said notice that although the petitioner was warned in writing on 11.3.97, the petitioner had again indulged in the acts of indiscipline on 22.11.97 and had been awarded "reprimand" for the same on 3.12.97. It was also indicated therein that perusal of his conduct sheet indicated that he was a poor airman material and not amenable to the service discipline. The petitioner was asked to show cause why the proposed action be not taken against him. Pursuant thereto, the petitioner asked for certain documents and thereafter submitted his reply to the show cause. The said reply was considered and thereafter the impugned order was issued by the respondents. Before the aforesaid order was passed, the petitioner was given the reasonable opportunity of showing cause, in terms of which he also showed cause and, Therefore, no procedural violation was committed by the respondents while issuing the aforesaid impugned order. The petitioner also did not urge any procedural violation in the writ petition nor any such violation in issuing the impugned order was urged before me. The aforesaid show cause notice was duly served, to which the petitioner submitted his reply. The same was duly considered by the competent authority and the impugned order of discharge was passed against him. Although statutory remedy was available to the petitioner as against the aforesaid order but he did not resort to any of such statutory remedy and instead filed the present petition in this court.

4. Counsel appearing for the petitioner submitted before me that the action taken by the respondents in discharging the petitioner from service is illegal and without jurisdiction. It was also submitted that the case of the petitioner was not covered under the policy of the respondents. It was also submitted that the petitioner had no knowledge about the charges and he was denied all reasonable opportunities because of which he could not file an effective reply to the show cause and, Therefore, the action taken by the respondents is untenable.

5. Counsel appearing for the respondents, however, drew my attention to the contents of the warning notice and also to the show cause notice and submitted that in the facts and circumstances of the present case, the action taken is in accordance with the extent provisions of law and is justified. It cannot be disputed that a power is vested on the respondents to proceed and take action under Rule 15(2)(g)(ii) of the Air Force Rules, 1969 and by exercising the said power the respondent could discharge an Airman in accordance with the said rules. Before the said action was taken, a show cause notice was also issued to the petitioner giving him all reasonable opportunities to show cause and establish as to why the said action should not be taken against him. It was brought to his notice that he had come within the purview of the aforesaid provision and, Therefore, he should show cause why the said proposed action should not be taken against him. The records disclose that the petitioner had earned three punishment entries (red and black ink entries including) for repeated commission of offence, for which he was given prior warning on 11.3.1997 and that he was on the threshold of falling in the category of habitual offender and, that he was to mend himself and desist from the acts of indiscipline. It was also brought to his notice that addition of another punishment entry would attract the provisions of Rule 15(2)(g)(ii) of the Air Force Rules. In spite of the aforesaid prior warning given to the petitioner, the petitioner was again involved in another act of indiscipline on 22.11.1997 in respect of which he was awarded punishment of "reprimand". Consequently, the show cause notice was issued stating that he was a poor airman material and not amenable to the service discipline.

6. The Supreme Court in the case of Union of India & Others vs. Corporal A.K. Bakshi & Another reported in 1996 (2) SLR 484 considered the policy in question and held that action of discharge under Rule 15(2)(g)(ii) of the Air Force Rules is not by way of punishment for misconduct. It was further held that in case the procedure prescribed under the policy is followed, the order of discharge would not suffer from any infirmity and there would be question of upsetting the same.

7. My attention was also drawn to another Division bench decision of this court in CW 1743/94 disposed of on 15.7.1996 titled Ex. CPL.C.S. RANA Vs. UNION OF INDIA AND OTHERS where a similar issue had arisen for consideration. On consideration of the facts and circumstances of the case which are almost similar to the nature in hand, the Division Bench dismissed the writ petition. In my considered opinion, the writ of the decision of the Supreme Court and the decision of the Division Bench of this court apply in full force to the facts and circumstances of the present case.

8. From the facts delineated above, I am satisfied that the order of discharge does not suffer from any infirmity. The said order also cannot be held to be termination by way of punishment. It is thus held that there is no merit in this petition and the petition stands dismissed.