

(2006) 11 DEL CK 0021
In the Delhi High Court
Case No : WP (C) No. 1189 of 1999

Ex. CPL Vashishth

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 29-11-2006

Acts Referred:

Air Force Rules, 1969 — Rule 15(2), 18, 74
Constitution of India, 1950 — Article 14, 226
Pension Regulations — Regulation 121

Citation : (2006) 11 DEL CK 0021

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

Bench : Division Bench

Advocate : Rekha Aggarwal, for the Appellant; Maninder Acharya and Sameena Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—The petitioner in the present writ petition under Article 226 of the Constitution of India has prayed that a writ of Mandamus be issued, directing the respondents to reinstate the petitioner in the service with all consequential benefits along with back wages as well as to grant the pension as per Rules, as the petitioner has served for more than thirteen (13) years.

2. The grievance of the petitioner is that respondents have illegally and arbitrarily discharged him pre-maturely without pension after approximately thirteen (13) years and seven (7) months of service as a radio technician with Air Force defense System Operator. The order of discharge has been made without assigning any reason and without holding any enquiry and thus violated the principles of natural justice enshrined in Article 14 of the Constitution of India. In March, 1983 petitioner completed his training successfully. In the year 1985 he was awarded first rate of good conduct pay badge and in the year 1990 he was awarded second rate of good conduct pay badge. It is stated that during this period on three (3) occasions the petitioner was absent without leave for which

he was awarded punishments. In November, 1994 due to excess load of work on his mind, the petitioner met with an accident with a tractor trolley. In spite of the injuries and contrary to rules the petitioner was sent to Jaisalmer. On 15.3.1995 the petitioner was issued a show cause notice as to why the petitioner should not be discharged from service under Rule 15(2) (g) (ii) of the Air Force Rules, 1969 and reply thereto was to be filed within ten (10) days. Vide order dated 12.6.1995 the petitioner has been illegally discharged.

3. It is submitted by the learned Counsel for the petitioner that the order of discharge dated 12.6.1995 is bad in law, is arbitrary and is liable to be quashed. Although, learned Counsel for the petitioner has not challenged the policy dated 11th September, 1987, but submitted that the proper procedure has not been complied with. He submits that the punishments awarded to the petitioner from time to time were minor punishments and the same could not have been the basis for discharge.

4. Learned Counsel for the respondents on the other hand has submitted that the petitioner is a habitual offender and in spite of the written warning dated 14th October, 1990 as well as counselling the petitioner had failed to desist from the acts of indiscipline, during his service career the petitioner incurred two (2) black ink entries and four (4) red ink entries. Learned Counsel for the respondents further submitted that the respondents were forced to issue a show cause notice dated 09th March, 1995 to the petitioner calling upon him to show cause as to why he should not be discharged from service under Rule 15(2)(g)(ii) of the Air Force Rules, 1969. The show cause notice reads as under:

Headquarters

South Western Air Command

Indian Air Force

Jodhpur-342011

SWAC/C 3401/18/3/P1

09 Mar, 95.

673920-B Vashista ADSO

47 SU, AF

SHOW CAUSE NOTICE

1. WHEREAS, You were enrolled in the IAF on 03 Nov. 81 and were assigned the trade of ADSO.

2. AND WHEREAS, during your total service of 13 years and 4 months in the Air Force, you have been summarily tried and punished on as many as six occasions out of which four are red ink entries in your conduct sheet (copy of the conduct sheet is attached as appendix "A" to this show cause notice).

3. AND WHEREAS, You were dully warned by AOC 18 wing, AF in writing on 14 Oct 90. counseling you to desist from acts of indiscipline as any further addition of punishment entry would result in initiating action for your discharge from service (copy of the warning letter is attached as Appendix "B" to this show cause notice).

4. AND WHEREAS, inspire of the written warning you have again indulged in an act of indiscipline and were awarded "Severed Reprimand" on 01 Feb 95 by CO 47 SU, AF for absenting yourself from 0730 hrs on 15 Jan 95 while on T/D to 41 Wing, AF and reported at 0700 hrs on 23 Jan 95 at your section (Total absence 7 days 23 hrs. and 29 mints and failed to book in at Main Guard Room after return of T/D from 41 Wing, AF on 23 Jan 95.

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

6. NOW WHEREAS, you are to show cause as to why you should not be discharged from service under Rule 15(2)(g)(ii) of AF Rules 1969. Your reply to this show cause notice is to be submitted to your Cod within ten days of receipt of this notice failing which it shall be assumed that you have nothing urge in your defense against your discharge from service and further action would be taken accordingly.

Sd/- (PK Pawar)

Wg. Cdr.

CPSO

for AOC-in-C

Encl: 1. Copy of conduct sheet.

2. Copy of warning letter.

5. it is submitted that as no satisfactory reply was received and an order of discharge was passed. It has been contended by learned Counsel for the respondents that even, otherwise, the petitioner at no stage challenged the punishments awarded to him from time to time, the first one being on 10th August, 1984, hence at this stage, it would not be open to the petitioner to challenge the same.

6. It has further been submitted that the petitioner had earlier filed a writ petition [CW(C) No. 4495/95] challenging the order of discharge, however, the said petition was dismissed as withdrawn. It will be useful to reproduce the order passed by the Division Bench in the earlier writ petition:

ORDERS

15.7.96 Present: Mr. Narinder Kaushik for the petitioner.

Mr. K.C. Mittal for the respondents.

CW 4495/95

Learned Counsel for the petitioner states that he has instructions to withdraw the petition and he further stated that the petitioner will approach the Government for the grant of service pension.

Dismissed as withdrawn.

15.7.1996 Sd/- Devinder Gupta

Judge

Sd. M.S.A. Siddiqui

Judge

7. Learned Counsel for the respondents submitted that in view of the fact that the petitioner had withdrawn the earlier writ petition, with the liberty to approach the Government for the grant of service pension, the present petition is not maintainable.

8. The learned Counsel for the respondents also contended that although the policy is a guideline, the petitioner has been discharged under Rule 15(2)(g)(ii) of the Air Force Rules, 1969. Having perused the Conduct Sheet of the petitioner and the show cause notice which has mentioned the warning letter dated 14th October, 1990, we find that the respondents completely followed the procedure before passing the order of discharge against the petitioner. Division Bench of this Court in a similar case had earlier held in Capt. Raj Kumar Singhal v. Union of India and Anr. WP(C) No. 1450/2001 decided on 27th July, 2006 as under:

15. 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) and 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.

9. The aim and object of the policy relating to habitual offenders is to deal with the habitual offenders firmly. The policy is based on a study conducted by the Institute of defense Management regarding the existence of habitual offenders

amongst the Airmen. The operative part of the policy has been reproduced by the petitioner in the writ petition itself. The Court cannot lose track of the fact that the main ethos of the policy dated 11th September, 1987 was to weed out habitual offenders amongst the Airmen as they had an adverse effect on the general discipline and administration in the Air Force. The petitioner has Along with the writ petition filed a copy of his Conduct Sheet which clearly shows that the petitioner was an indisciplined Airman and six punishments were awarded to him between August, 1984 to 15th January, 1995. The petitioner at no stage had ever challenged these punishments. The acts of indiscipline of the petitioner are totally unbecoming a member of the Air Force. Admittedly, the petitioner was not only warned vide letter dated 14th October, 1990, but he was also given counselling. Following the principles of natural justice, respondents issued a show cause notice to the petitioner before passing the order of discharge.

10. Learned Counsel for the petitioner had also argued that the petitioner had put in more than 13 years and 7 months of service and it would be a fit case where the petitioner should be granted pension and the shortfall, if any, should be condoned. Learned Counsel for the respondents has drawn our attention to Regulation 121 of the Pension Regulations for the Air Force, 1961, under which a person has to put in 15 years of service to qualify for pension. Regulation 121 of the Pension Regulation for the Air Force, 1961 reads as under:

SECTION II SERVICE PENSION AND GRATUITY

Sub Section I-Airmen

Minimum qualifying service for pension

121. Unless otherwise provided for, the minimum qualifying regular service for earning a service pension is 15 years.

11. Although, learned Counsel for the respondents has admitted that the respondents have the discretion to condone the shortfall of the period up to one year, but in the case of the petitioner the shortfall in the number of days is more than one year, Therefore, this request of the petitioner cannot be acceded to.

12. 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 12.6.1995.

13. 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.