

(2002) 09 DEL CK 0045

In the Delhi High Court

Case No : Civil Writ Petition No. 5576 of 1998

Ex/Mer Kamal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Citation : (2002) 09 DEL CK 0045

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : V.P. Sharma, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

Khan, J.—Petitioner was enrolled in NAVY as sailor on 8.8.1994 and put on training. After 20 days or so he was discharged by order dated 29.8.1994 under Navy Regulations 278. He challenges this on the ground that the order was founded on his misconduct, was penal in nature, cast stigma on him and was vocative of principles of natural justice as now show cause notice was issued to him. He also claims that he was not discharged by the Captain of Training establishment and relies upon several Supreme Court judgments to suggest that he was entitled to show cause notice and prays for quashing of this order.

2. Respondents stand is that he was found unsuitable by the Captain of the training establishment, INS Chilka during his training after he had failed to qualify the entry behavior test in which he had obtained only 34% marks against the prescribed requisite standard of 50% marks. The discharge order was based on his weakness in academics and poor performance in basic training course and not on his misconduct or illness. It is explained he and 13 other trainees were found unattainable for Naval Service and were interviewed by the Commanding Officer who had found them unable to cope with the pace of training. On this, petitioner's discharge order was approved by the Captain, Training establishment.

3. All that falls for consideration is whether petitioner was required to be given

any show cause notice before passing of order of discharge. The relevant provision of Regulation 278 reads thus:-

"REGULATION 278

(4) Any Boy, Artificer Apprentice or Men, during probationary service, shall be liable to be discharged as "Unsuitable" under orders of the authorities herein stated, if his progress or conduct is unsatisfactory."

(c) Direct Entry Sailors--by the Captain of the Training Establishment concerned during the period of training and thereafter by the Captain Naval Barracks.

4. The Regulation authorises the Captain of Training establishment to discharge a trainee sailor as unsuitable if his progress or conduct is found unsatisfactory. Given regard to the stand of respondents that petitioner had failed to make grade in the entry behaviors test and was found weak in academics and training progress and was interviewed by the Commanding Officer for this, his order of discharge cannot be said to have been passed on misconduct. On the contrary, it was apparently passed on his unsatisfactory progress in the training.

5. It would be over-stretching the principles of natural justice to hold that petitioner was entitled to any show cause notice before his discharge. The relevant regulation empowers the Captain to assess his performance in the training and if he is found wanting or unattainable for the Navy, he cannot insist on his continuation despite his bad or poor performance. Nor does it fall within the domain of the court to interfere in such assessment and evaluation. The requirements of Navy are altogether different from any other service and if a trainee Sailor fails to meet these, he cannot seek retention on the specious plea of violation of principle of natural justice, any analogy drawn from same rule position in civil service. We have gone through the judgments cited by L/C for petitioner but we do not find any one of these relevant on the point. As a matter of fact petitioner seems to be misdirecting his case by assuming that he was discharged on some misconduct ignoring that he had failed to come up to the mark in the training.

This petition accordingly fails and is dismissed.