
(2011) 08 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25930 of 2010

Flight Cadet Rini Tripathi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Air Force Orders — Order 12, Order 13
Air Force Rules, 1969 — Rule 154

Citation : (2012) 1 ALT 733

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P.B. Vijay Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Honourable Sri Justice L. Narasimha Reddy

1. The petitioner appeared in the common entrance test conducted by the Indian Air Force for selection to the post of Pilot. On the basis of the performance in the entrance test, she was called for the interview before the Service Selection Board. She was ultimately selected and was drafted for training between June 2008 and June 2009, in the Air Force Academy, Hyderabad, the 4th respondent herein.

2. Through proceedings, dated 22.06.2009, the Wing Commander of Head Quarters of the Training Commandant, Bangalore, informed the petitioner that the Training Review Board recommended that her training is terminated in accordance with para 54 (d) of the Air Force Order No. 13 of 2005 and that the proceedings of the Board are approved by the competent authority at the Head Quarters. Thereupon, the petitioner submitted a representation, on 19.01.2001, with a request to reduce the punishment. The same was turned down by the Chief of Air Staff, Air Head Quarter, New Delhi, the 2nd respondent herein, vide proceedings dated 28.04.2010. Hence, this writ petition.

3. The facts that gave rise to the filing of the writ petition are as under:

Several cadets, selected along with the petitioner, are undergoing training at the 4th respondent Academy. The petitioner states that her friendship with another Cadet, by name, Sapna Pandey is such that, they used to discuss their personal matters with each other and exchange their ATM cards also, in case of necessity or urgency. It is stated that on 02.02.2009, one of the cadets by name Piyush Agarwal, hailing from the native place of the petitioner was in urgent need of money and unable to trace her ATM card and cheque book, immediately, the petitioner has drawn a sum of Rs. 10,000/- from the account of Sapna Pandey. According to her, Sapna Pandey was not available, when she went to convey this, and in the meanwhile, Sapna Pandey went to Bank on 06.02.2010 to update her account.

4. The petitioner contends that when she met and informed of the development that took place on 02.02.2009, Ms. Pandey became furious and complained the matter to the superior officials. It is stated that the written explanation of the petitioner was sought by the Senior Officer of the Training Academy and thereafter, the Chief Instructor is said to have threatened and required her to pack the bag and baggage. She further contends that neither any written communication was issued, nor any enquiry was conducted before the proceedings dated 22.06.2009 were issued.

5. The petitioner submits that the conduct and conditions of cadets are governed by the Air Force Order 12 (AFO), and for those, after certain stages, by AFO 13. According to her, the provisions of Air Force Act and the Rules made thereunder are not applicable to them. She submits that for a small incident that has arisen between two cadets out of communication gap, punishment of highest order was imposed, without following the prescribed procedure. It is stated that Sapna Pandey had withdrawn her complaint and there was no basis for the respondents to inflict the maximum punishment upon the petitioner.

6. A detailed counter-affidavit is filed on behalf of the respondents. The circumstances under which the impugned orders were passed are narrated in detail. The averment of the petitioner that the provisions of Air Force Act do not apply to her, is admitted. It is, however, pleaded that the procedure prescribed under AFO 13 was followed and that no interference is warranted with the orders questioned in the writ petition.

7. Sri P.B. Vijay Kumar, Learned Counsel for the petitioner, submits that the conduct and discipline of cadets under training is governed by AFO 12 and assuming that there was any minor lapse on the part of the petitioner, it is only a case, to be taken note of under the relevant clause of AFO 12. He contends that the occasion to convene a Training Review Board (TRB) or to refer the case of the petitioner to it would arise, only when a cadet is found to have committed three mistakes consecutively. Learned Counsel submits that the respondents have invoked the provisions of the Air Force Act and the Rules made thereunder, in the

case of the petitioner, without any basis.

8. Learned Assistant Solicitor General, on the other hand, submits that even from the admission of the petitioner, the act of misconduct was committed and taking note of the same, proceedings in accordance with law were initiated. He contends that Air Force, being one of the most disciplined organizations, the cadets therein are required to be careful, honest and duty minded. He submits that the mere fact that the complaint was withdrawn by a colleague of the petitioner does not make any difference.

9. The incident that gave rise to the initiation of proceedings against the petitioner is, withdrawal of a sum of Rs. 10,000/- from the account of her fellow cadet. Though the petitioner pleaded that herself and her friend were so intimate that they used to draw amounts from each other's account, once the complaint is submitted by her colleague, the so-called intimacy pleaded by her becomes redundant. It has to be proceeded as though there was an act of misconduct on the part of the petitioner.

10. The next question would be to examine as to how, the act so committed by the petitioner, ought to have been dealt with.

11. The Air Chief Marshal, issued or promulgated Air Force Orders 12 and 13 on 09.12.2005. The heading of AFO 12 reads:

"DISPOSAL OF DISCIPLINARY CASES: FLIGHT CADETS".

The heading of AFO 13 is "CONDUCT OF AB INITIO TRAINING: OFFICERS ON PROBATION/FLIGHT CADETS OF AE AND GROUND DUTY BRANCHES.

12. Clause 1 of AFO 12 mentions its aim and part I thereof furnishes the general information. They read as under:

AIM These orders will regulate the disposal of disciplinary cases against Flight Cadets.

PART I -GENERAL INFORMATION "Common terms and explanations used in this AFO are to be interpreted in the succeeding paragraphs as defined unless stated otherwise.

Flight Cadet. The individuals selected to undergo pre-commission training in various training institutions of the IAF, will be called as "Flight Cadets". A Flight Cadet is not subjected to the Air Force Act 1950, but will be governed by the code laid down in this order and other related orders.

13. The aim of AFO 13 on the other hand is mentioned as under:

The aims of this AFO are to:-

(a) Issue guidelines for standardization of training and evaluation system at ab initio training establishments for officers.

(b) Specify the procedure for review of performance of trainees.

(c) Specify the procedure to deal with cases where a trainee is found unsuitable for further training.

14. The acts, which constitute indiscipline, are mentioned in clauses 7 to 23 of AFO 12. Clauses 25 to 27 deals with the procedure to be followed for disposal of a case. They read as under:

25. A Flight Cadet charged with committing a breach of discipline, whether on the ground or in the air, will in the first instance, be brought before his Flight Commander or other immediate superior officer, who will informally investigate the case. The Flight Cdr/Immediate Superior Officer may dispose off the case as deemed fit or refer the matter to the Chief Instructor (Flying), Chief Instructor (Ground), or Senior Instructor as the case may be.

26. Chief Instructor (Flying) Chief Instructor (Ground), or Senior Instructor on receiving the report on breach of discipline on the part of a cadet will:-

(a) Ascertain facts of the case.

(b) Consider the circumstances which led to committance of the act.

(c) Consider overall performance of the trainee in training.

(d) Consider previous history (regarding discipline) of the trainee, if any.

27. In case it is established that the circumstances that led to the committance of the act were beyond the control of the trainee, then the overall performance of the trainee and his/her previous history (regarding discipline) should be considered while awarding punishment. All Flight Cadets committing either same or different act of indiscipline the second time should be remanded to the Deputy Commandant (AFA)/Commanding Officer (ADC). The cases of Flight Cadets committing an act of indiscipline for the third time, would be referred to Commandant/HQ TC (SASO), who may dispose off the case by awarding a punishment or may decide to conduct a TRB depending upon the seriousness of the case and the past record of the cadet.

15. The punishments that can be imposed are mentioned in clauses 29 of the said Order. The punishments range from denial of privileges, to deferment of commission for a period of one month. Clause 31 mandates that the Training Review Board can be convened, only when a flight cadet commits acts of indiscipline for a third time. Here itself it is necessary to mention that the occasion to convene the Training Review Board under AFO 13 is substantially different as is evident from Clause 45 thereof.

16. In the instant case, it is evident from the order dated 26.11.2009 that the matter pertaining to the petitioner was placed before the Training Review Board. It has already been mentioned that the occasion to place the matter before the Board would arise, only when a cadet is found to have resorted to acts of

indiscipline, thrice. It is not in dispute that the act or omission attributed to the petitioner in the first one. Hence, the procedure adopted by the respondents was totally untenable.

17. In the counter-affidavit, it is stated that the matter was placed before the Court of Enquiry, on the basis of order passed by the Deputy Commandant, and that on finding that the Court of Enquiry was not in accordance with Rule 154 (e) of the Air Force Rules, 1969, a fresh de novo Court of Enquiry was ordered, as advised by the Air Head Quarters.

18. The Court of enquiry was held on 01.05.2009. The proceedings therein are sought to be justified on the ground that the petitioners participated therein.

19. In all fairness, the respondents have admitted in para 5 of their counter-affidavit that the Flight Cadets are not subject to Air Force Act, 1950. This in fact is the message conveyed through AFO 12, to all the cadets. Once it emerges that the Air Force Act does not apply, to the case of the petitioner, equally the Rules made thereunder do not apply, to it.

20. The respondents sought to justify the placing of matters before the Training Review Board by invoking clause 54(d) of AFO 13. It has already been mentioned that even according to clause 45 of AFO 13, the matter pertaining to the petitioner cannot be brought before the purview of the Board. Clause 54 deals with recommendations as to punishments. When the very placing of the case of the petitioner before the Training Review Board, cannot be sustained, either under clause 31 of AFO 12 or Clause 45 of AFO 13, the punishment imposed against the petitioner cannot be countenanced.

21. Hence, the writ petition is allowed and the punishment imposed against the petitioner is set aside. The respondents shall take necessary steps to enable the petitioner to complete the training in accordance with the prescribed procedure. It shall, however, be open to them to deal with the act of indiscipline, namely, withdrawal Rs. 10,000/- from the account of another candidate, under Clause 25 of Air Force Order 12.

22. There shall be no order as to costs.