

(2021) 08 AFT CK 0013

In the Armed Forces Tribunal

Case No : O.A. No. 1054, 1055 of 2021 with M.A. No. 1010, 1011 of 2021

Gnr (OFC) Dinesh Singh

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a)
Army Rules, 1954 — Rule 147, 180
Indian Official Secrets Act, 1923 — Section 3, 5
Right to Information Act, 2005 — Section 8

Citation : (2021) 08 AFT CK 0013

Hon'ble Judges : Rajendra Menon, Chairperson (J); P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : Rajiv Manglik, Karan Singh Bhati,

Final Decision : Disposed Of

Judgement

1. In our Order dated 10.06.2021 we had directed the following:-

2. Considering the manner in which action has been taken for relieving the applicant from the course, prima facie, we find that the requirements of

the principles of natural justice and the statutory provisions have not been complied with before taking the impugned decision. Considering the same, we direct

that status quo in the matter as on today shall be maintained and the order of discharge of the applicant from the course in question shall be kept in abeyance

till the next date of hearing, on which date further orders would be passed after considering the reply affidavit of the respondents.

2. In the light of the counter affidavit filed by the Respondents, we heard both sides on the issue of maintaining status quo as on 10.06.2021 and

holding the discharge of the applicant in abeyance.

Arguments by the Counsel for the Respondents

3. The Counsel for the Respondents briefly recapitulated the sequence of events from 24.02.2021 to 03.03.2021, in which the applicants were involved

in a case of grievous assault and affray at the IMA on 02 & 03.03.2021 which resulted in a major breach of discipline in a premier training

establishment; brought into play larger concerns of foreign relations of the country as the incident involved cadets from Tajikistan; and certain

organisational infirmities/ lapses on the part of the Institution and its staff which aggravated the issue. The Counsel then elaborated on the strategic

importance of Tajikistan, the importance of a cordial relationship between India and Tajikistan in the context of India's foreign relations/ policy and

strategic issues.

4. The Counsel took us through various provisions of the HQ ARTRAC Administrative Instructions for Pre-Commission Training Academies (PCTA)

and Cadet Training Wing (CTW) issued vide their letter No. 935306/PCT dated 19.07.2018. Referring to Para 15 & 16, the Counsel elaborated that

while regular cadets are governed by these administrative instructions, service cadets under training at PCTA will, in addition to these admin

instructions be also governed by the Army Act, 1950. The Counsel emphasised that since the applicants in these cases were service cadets, they will

be governed by both, the administrative instructions and the Army Act. Further referring to Paras 70 and 75, the Counsel stated that a cadet can be

withdrawn on disciplinary grounds, depending upon the merits of the case. He further elaborated that in exceptional cases, where the nature of

offence is grave/serious, the Comdt can recommend the withdrawal of a cadet without previous warning. However, efforts must be made to provide

adequate opportunity to the cadet to explain his/her conduct. In all cases, the gist of the charges must be communicated to the cadet in writing along

with a Show Cause Notice and an opportunity afforded to the cadet to submit his/her reply before the Comdt recommends the case for withdrawal.

He further emphasised that the importance and relevance of friendly relations with foreign states can be gauged from the provisions of Article

19(1)(a) of the Constitution of India and Section 8 of the Right to Information Act, 2005 which exempts information affecting relationship with foreign

states.

75.

Disciplinary Grounds :

(a) In Exceptional cases, where in the opinion of the commandant the nature of the offence is grave/ serious the GC/LC/Service Cadet may be recommended for withdrawal without a previous warning. However, efforts would be made to provide adequate opportunities to the GC/LC/Service Cadet to explain his/ her conduct.

(b) In all cases, a gist of the charges against the GC/LC/Service Cadet must be communicated to him/her in writing along with a Show cause notice and an opportunity afforded for submitting an explanation before he/ she is recommended for withdrawal by the Commandant.

(c) A court of inquiry will be held in such cases to inquire into the disciplinary charges against the individual. Provisions of Army Rule 180 will be imposed towards conduct of the Court of inquiry in respect of service cadets, and in respect of non service GC/LC, tenets of natural justice will be applied. The proceedings of the court of inquiry along with the directions of the Commandant on the case, should be forwarded to HQ ARTRAC.

5. The Counsel further elaborating on the sequence of action after the incident stated that in order to ensure necessary impartiality, fair play and

justice, the investigation was taken out of the jurisdiction of IMA and carried out under the aegis of HQ Central Command by an independent court of

inquiry in accordance with the relevant provisions of the Army Act and principles of natural justice (in relation to the Foreign Gentlemen Cadets, who

are not subject to the Army Act). A detailed investigation was carried out, wherein a total of 39 witnesses and 23 Exhibits (including relevant

Administrative Instructions, Army Orders & Army Instructions) were examined by the Court of Inquiry. The provisions of Army Rule 180 were

invoked and both the applicants were given every opportunity to put forth their stand as regards the incident and also cross-examine the witnesses,

irrespective of rank/status. At no stage, during the proceedings of the Court of Inquiry did the applicants complain of any illegality, discrimination or

arbitrariness.

6. After due diligence, application of mind and detailed analysis of the records of Court of Inquiry proceedings, GOC-in-C HQ Central Command

issued his directions in accordance with Para 11 of the Regulations for the Army, 1987 (Revised Edition) on 24.04.2021. Ten GCs (four Indian and six

Tajiki) were identified by the CoI as primary and secondary instigators. The applicants were identified by the CoI as two of the primary instigators.

7. The CoI proceedings were then forwarded by HQ Central Command to HQ ARTRAC vide their letter number 190105/D/2021/AG/DV-2 (IMA)

dated 29.04.2021. The copy of findings, opinion and directions were forwarded to IMA with directions to take necessary disciplinary actions against

Indian GCs found blameworthy, in consultation with HQ ARTRAC. Though the documents were received by HQ ARTRAC on 13.05.2021 no action

was initiated against any Indian GCs, including the applicants, in order to ensure uniformity of process / procedure as well as equality of justice

vis-a-vis the Foreign GCs since no confirmation had been received from Ministry of External Affairs/ Ministry of Defence in respect of the

Foreign GCs.

8. Since the case involved foreign cadets, the entire CoI proceedings were further scrutinized by the COAS, at the MoD and MEA and finally a Note

Verbale was issued by ADG International Cooperation, IHQ of MoD (Army) vide their letter No A/92001/2020-21/GS/FTT dated 04.06.2021 in

which it was intimated that the Tajik Gentlemen Cadets found violating disciplinary norms on conclusion of CoI at Indian Military Academy were to be

withdrawn/ relegated. And that the training of the two cadets who were to be withdrawn would be terminated on 08.06.2021, and that the Embassy

was required to book their flight tickets back to Tajikistan.

9. Thus, apart from the fact that an independent investigation was conducted, all rules of fair play and natural justice were adhered to, and the case

was scrutinised at various levels, both in the Army and the GoI to ensure fairness/ equity in determining acts of omission/ commission and degree of

culpability/ punishment. Various actions for withdrawal were taken as per the procedure given at Paras 75, 80 and 131 of Administrative Instructions,

2018 (Annexure R-5).

10. Accordingly, a SCN was issued to all GCs who were found blameworthy, including the applicants on 04.06.2021. As per Para 75 of the Adm

Instrs, while a CoI is mandated in cases involving withdrawal of GCs on disciplinary ground, there is no provision/ mandate in these instructions to

provide a copy of the CoI to the cadet against whom disciplinary action is contemplated. A request from the Tajikistan Defence Attaché for

a copy of CoI was also declined on these grounds. HQ Central Command, too vide their letter No 190705/D/2021/AG/DV-2/IMA dated 29.04.2021

addressed to HQ ARTRAC has issued explicit instructions that keeping in mind the sensitive nature of the case, no photocopies of the CoI

proceedings will be made.

11. SCN dated 04.06.2021 were issued to both the applicants who submitted their replies on 05.06.2021 in which they did not categorically deny the

incidents. The applicants were aware of the entire facts of the case relating to the incident as AR 180 had been invoked, affording them adequate

opportunity to be present during the proceedings, cross-examine witnesses, produce evidence and make statements. Both applicants have also

rendered certificates confirming compliance of AR 180, and these were on record of the CoI. Since the applicants were in full knowledge of the

incidents as revealed at the CoI, based on which the SCN were issued, no prejudice had accrued to the applicants merely because the copy of CoI

was not provided.

12. On receipt of replies to the SCN from all the four GCs (two Indian and two Tajiki GCs) who were recommended to be withdrawn, the case was

submitted to HQ ARTRAC for approval, with the recommendations of the Commandant as per provisions of Para 72 of the Admin Instrs. HQ

ARTRAC examined the case and approved the withdrawal of the four GCs. On receipt of approval from HQ ARTRAC on 07.06.2021, the two

applicants and two foreign GCs were marched up before Comdt IMA on offence reports. During this procedure, the applicants did not highlight any

new facts or call any additional witnesses; and they pleaded guilty to the offences against them. Having heard the GCs, the Comdt ordered that the

four GCs be withdrawn. Thus, the applicants were withdrawn by the Comdt IMA as per due process in accordance with the tenets of military law

and as per the existing procedures.

13. Once the CoI proceedings were approved and the proposed action was confirmed by Ministry of External Affairs /Ministry of Defence, for

reasons explained, the withdrawal process was executed in a time bound manner. Thus, time bound execution needs to be distinguished from

action taken in haste. Apart from the fact that the Admin Instrs does not mandate providing a copy of the CoI with the SCN to the GCs, the CoI

proceedings were not shared with both the Indian and Foreign GCs due to larger issues of foreign policy sensitivities and larger organizational interests

being involved. Moreover, being a sensitive case with adverse ramifications, it would have adversely impacted the friendly relations with the foreign

country to which the cadets belonged.

14. Further, the expeditious action in the instant case was warranted since the Passing Out Parade of the applicants and other cadets undergoing the

course was scheduled on 12.06.2021 and any delay in the proposed action would have made it infructuous. Notwithstanding the same, due procedure

laid down in Para 75 of Administrative Instructions was scrupulously followed. Thus, the Applicants were given ample opportunity to put forth their

defence. The Applicants having pleaded "Guilty" to the offence against them are now estopped from resiling from their statements.

15. The Counsel then took us through certain provisions of AR 147A which states that if the Central Government certifies that it is against the

interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof, the copy of the

proceedings shall not be furnished. However, AR 147A permits inspection of proceedings subject to an undertaking and certification.

"147A. Copy of proceedings not to be given in certain cases.- Notwithstanding anything contained in Rule 147, if the Central Government certifies that it is

against the interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under the said

rule, he shall not be furnished with such copy: Provided that if the Central Government is satisfied that the person demanding the copy is desirous of submitting

a petition in accordance with the Act or instituting any action in a court of law in relation to the finding or sentence, it shall permit inspection of the

proceedings to such person or his legal adviser, if any, on the following conditions, namely:-

Â (a) the inspection shall be made at such times and such places as the Central Government or any authority authorised by it, may direct; and

(b) the person allowed to inspect the proceedings shall, before such inspection, furnish-

(i) an undertaking, in writing, that he shall not make copies of the proceedings or any part thereof and that the information or documents contained in such

proceedings shall not be used by him, for any purpose whatsoever other than for the purpose of submitting a petition in accordance with the Act or instituting an

action in a court of law in relation to the said finding or sentence; and

(ii} a certificate that he is aware that he may render himself liable to prosecution under section s 3 and 5 of the Indian Official Secrets Act, 1923 (19 of 1923), if

he commits any act specified in the said sections in relation to the documents or information contained in the said proceedings.â??

16. The Counsel then elaborated on the provisions of AR 184 which lays down the right of certain persons to copies of statement and documents,

unless it is ordered otherwise by the COAS for reasons to be recorded by him in writing.

â??184. Right of certain persons to copies of statements and documents

(1) Any person subject to the Act who is tried by the court-martial shall be entitled to copies of such statements and documents contained in the proceedings of a

court of enquiry, as are relevant to his prosecution or defence at his trial.

(2) Any person subject to the Act whose character or military reputation is affected by the evidence before a court of enquiry shall be entitled to copies of such

statements and documents as have a bearing on his character or military reputation as aforesaid, unless the Chief of Army Staff for reasons recorded by him in

writing, orders otherwiseâ?|â?|â?|â?|â??

17. The Counsel further elaborated that stated that COAS was the competent authority to withhold the copy of CoI proceedings on any justifiable

ground whatsoever, and that there was no express provision of inspection of such proceedings once withheld. However, in the instant case the COAS

has permitted inspection of the CoI proceedings, subject to certain undertaking and certification.

18. The original case-file with the sanction of the COAS was produced for perusal by the Tribunal. It is seen that at Note 09 dated 05.08.2021, the

COAS, having considered the recommendations of the staff and GOC-in-C, ARTRAC has approved withholding the supply of the CoI proceedings;

however, has permitted the inspection of the CoI subject to rendition of an undertaking.

Arguments by Counsel for the Applicant

19. The Counsel emphatically reiterated the gross injustice meted out to the applicants in withdrawing them from training and killing the aspirations of the two soldiers from becoming officers in the Indian Army. He further stated that without going into the merits of the case at this stage, it was the prayer of the applicants that they be provided a copy of the CoI since the applicants were the aggrieved party having been beaten up and injured in the scuffle and that they were being withdrawn without any case being registered against the perpetrators of the incident. The Counsel further stated that foreign relations cannot undermine the need to ensure equitable justice to Indian nationals.

20. He further added that in the eventuality of the applicants being only permitted to inspect the CoI proceedings, they be given adequate time to peruse the CoI proceedings at a suitable place by the Respondents.

Consideration of the Case

21. Having heard both sides at length we find much force in the arguments of the Respondents in withholding the supply of a copy of the CoI proceedings to the applicants. With regard to the issues pertaining to the order dated 10.06.2021 and the necessity of the applicants having access to the CoI proceedings to prepare their case and file a rejoinder as mentioned by the Counsel for the applicants, the following is directed :-

(a) Respondents to make necessary arrangements for the applicants and their Counsel to inspect the CoI proceedings here at New Delhi, in the office of the custodian

of the documents and intimate the details to the Counsel for the applicants.

(b) The applicants and their Counsel are permitted to inspect the CoI proceedings and take necessary notes over seven working days.

(c) The Respondents will obtain an undertaking from the applicants and their Counsel prior to commencing perusal of the CoI proceedings stating that they will not

divulge any details of the proceedings to anyone else.

(d) The applicants and their Counsel will ensure that no copies are made or photographs taken of the proceedings.

(e) Status quo being maintained in respect of the applicants, as of 10.06.2021, to continue.

(f) Rejoinder, if any, to be filed within four weeks of the completion of perusal of the CoI proceedings.

22. With the aforesaid directions, M.A. No. 1010 of 2021 and M.A. No. 1011 of 2021 stand disposed of.

23. Both the OAs be now listed on 8th October, 2021.

Pronounced in open Court on this 18th day of August, 2021.