
(2010) 09 UK CK 0109

In the Uttarakhand High Court

Case No : Writ Petition No. 290 of 2007 (S/B)

Kranti Kumar Chhetri and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Citation : (2010) 09 UK CK 0109

Hon'ble Judges : Barin Ghosh, C.J;V.K. Bist, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—The writ petitioner No. 1 has been withdrawn from the Indian Military Academy. In the writ petition, it is the contention of the petitioners that instead of petitioner No. 1 being withdrawn from the said academy, he should have been relegated. The learned Counsel for the petitioners has drawn our attention to the Administrative Instructions pertaining to Indian Military Academy and Officers Training Academy. Paragraph 50 of the said Administrative Instructions prescribes the scale of punishment as given in Appendix-A thereto. In terms of Clause 2(A)(ii) of the said Appendix fraudulent use of credit cards belonging to other persons would invariably result in withdrawal. In the order, withdrawing the petitioner No. 1, it has been stated that on 7th February, 2007 the petitioner No. 1 stole the ATM card of one M.R. Singh and fraudulently withdrew Rs. 3,000/- from his account. Petitioner No. 1, it was thus alleged, fraudulently used the ATM card belonging to another person. This allegation is not being denied. Having noted the scale of punishment mentioned in the said Administrative Instructions, it is not possible for us to hold that instead of withdrawal, the petitioner No. 1 should have been punished by relegation.

2. As a result of withdrawal of the petitioner No. 1 he and his father, the petitioner No. 2, have been fastened with a liability of Rs. 11,48,006/- purporting to be the cost of training and allied charges. Petitioners contend that the same is not permissible. In the counter affidavit the respondents have enclosed the relevant portion of the Rules whereby and under it has been

provided that cost of training, messing and allied charges/services will be recovered from cadets who are withdrawn from the academy for being dismissed or discharged or withdrawn on disciplinary grounds. With the counter affidavit the respondents have annexed copy of an agreement signed by the petitioner No. 2, whereby and under he undertook to pay forthwith to the Government in cash such sums as the Government shall fix but not exceeding such expenses as shall have been incurred by the Government on account of petitioner No. 1 on his training and all the money received by petitioner No. 1 by way of pay and allowances from the Government together with interest on the said money calculated at the rate in force for Government loans. Petitioner No. 1 having been withdrawn on disciplinary grounds, it would not be appropriate on our part in this writ petition to hold and declare that the claims put forward by the respondents against the petitioners are not sustainable. However, all questions pertaining thereto should be decided in such proceeding as may be initiated by the respondents for recovery of such money from the petitioners and any observation made herein above shall not prejudice determination thereof in such proceedings.

3. However, it appears that the third grievance of the petitioner No. 1 is that his certificates are lying with the respondents, which have not been returned to him. The respondents are seeking to contend that no sooner money due is paid, the same would be returned to the petitioner No. 1. The Rules upon which reliance have been placed do not authorise withholding of the certificates of the petitioner No. 1 by the respondents under such circumstances. The academic and other certificates of the petitioner No. 1 cannot be treated as cash and accordingly, it cannot be contended that the respondents have right to appropriate the same towards their dues. Similarly, those certificates being personal in nature cannot be treated as goods and accordingly, cannot be treated to have been pledged or hypothecated in favour of the respondents. In those circumstances, the respondents cannot refuse to return those certificates to the petitioner No. 1. We accordingly, direct the respondents to return those certificates to the petitioner No. 1, no sooner a copy of this judgment and order is served upon respondent No. 3, but not later than one month therefrom.

4. The writ petition is disposed of.