
(2006) 07 DEL CK 0081
In the Delhi High Court
Case No : WP (C) 2412 of 2006

L.D. Mahipal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Army Act, 1950 — Section 48
Army Rules, 1954 — Rule 13, 13(3)
Constitution of India, 1950 — Article 226

Citation : (2006) 07 DEL CK 0081

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

Bench : Division Bench

Advocate : R.K. Dixit, for the Appellant; Sanjay Katyal, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The petitioner was enrolled in the Indian Army as a Recruit in the Trade of Driver (AFV)/Gunner GP "Y" Armed Corps, Ahmad Nagar on 1.11.1992. After successful completion of basic military training, the petitioner took oath and after attestation parade he was enrolled as member of the armed force. On 23.05.1994, the petitioner was posted to 7th Light Cavalry, Pin-912607, C/o 56 A.P.O. After having put in five years of proper and punctual service, the petitioner was promoted to the rank of Assistant Lance Dafedar and posted to another unit where the petitioner was detailed for Station Bus Driver duty. According to the petitioner, he was performing his duties to the satisfaction of all concerned. On 8th December, 2000, there was a "Send Off" party of L.D. Hanumant Singh who was to proceed on retirement. The petitioner was detailed on station bus driver duty to receive and drop the unit personnel to Jodhpur Railway Station. But Maj. Chhater Singh Shekhawant of the unit detailed other driver in place of the petitioner as the petitioner was charged to be drunk and even without any medical report, the punishment of severe reprimand u/s 48 of the Army Act (hereinafter referred to as the Act) was awarded to the petitioner. On 9.12.2001, the petitioner was even promoted as Lance Dafedar. Again, he

was involved in a liquor incident and was given reprimand on 19.05.2002. It is averred in the petition itself that even thereafter, two punishments were inflicted upon the petitioner by Maj. Devender Singh and both were of Severe Reprimand under the same provision. On 9.3.2005, the petitioner was admitted in the Military Hospital, Jalandhar Cantt. for re-medical categorization and was put from "CEE" to temporary medical category "BEE". The petitioner was discharged on 7.4.2005 from the said hospital in low medical category of BEE after re-categorisation. On 19.06.2005, Maj. Devender Singh had threatened the petitioner that he would spoil his career. The authorities served a show cause notice in June, 2005, calling upon the petitioner to submit his reply to the contents of the show cause notice and an opportunity was afforded to him to show cause as to why he should not be discharged from army in terms of Army Rule 13(3), Item III and it was clearly stated in the said letter that in the event no reply is received within the stipulated time, it will be assumed that the petitioner had nothing to say. On 09.08.2005, the petitioner was dismissed from service and sent home without giving him any documents, movement order or dismissal certificate. According to the petitioner, he was not subjected to any re-medical board before he could be sent home. Vide letter dated 23.11.2005, the discharge documents were received by the petitioner and thereafter on 08.12.2005, the petitioner again requested the respondents to furnish complete documents which the respondents failed to give. On the basis of the above averments, the petitioner had filed the present writ petition under Article 226 of the Constitution of India praying for setting aside and quashing the order of dismissal dated 6.8.2005 being vocative of rules, principles of natural justice and in fact being null and void in the eyes of law. The petitioner further prayed for reinstatement and consequential benefits.

2. Upon notice, the respondents filed a detailed affidavit. The factual averments made in the writ petition are not really disputed but it is the allegation with regard to the violation of law, rules and principles of natural justice which is seriously disputed by the respondents. It is stated on behalf of the respondents that the petitioner had reported to the Military Hospital Patiala on 28th August, 2004 and was discharged on 20th September, 2004 stating that he was the case of alcohol dependence syndrome. The medical authorities recommended him unfit for handling arms/ammunitions and to work under supervision. As the petitioner failed to show any improvement, he was discharged from service. The following paragraphs in the counter affidavit need to be noticed for clearly understanding the stand of the respondents:

8. That the disability of the petitioner declared by medical authorities was "ALCOHOL DEPENDENCE SYNDROME" and he was downgraded to medical category S3 (T-24) H 1 A 1 P1 E 1 w.e.f. 18th September, 04 for a period of six months. The copy of AFMSF-15, med board proceedings duly approved on 24th September 04 is annexed herewith as ANNEXURE R-3.

9. That the petitioner was posted from 1 (Independent) Armoured Squadron to

7th Light Cavalry on 21 September 04 vide movement order No. 574/1/A(i) dated 21 September 04. The copy of Movement order dated 21.9.04 is annexed herewith as ANNEXURE R-4. The petitioner was reviewed by medical authorities and upgraded to medical category S2(T-24) H1A1P1E1 w.e.f. 05Th March 05 and his case was further required to be reviewed by 20 August 05. A copy of AFMSF-15, med board proceedings duly approved on 16th April 05 is annexed herewith as ANNEXURE R-5.

10. That the petitioner was further awarded "SEVERE REPRIMAND" under AA Sec. 48 for being found in intoxicated condition in unit line on non issue day on 19th June 2005.

11. That despite repeated counseling, the petitioner continued to consume liquor and got intoxicated regularly, which was unbecoming of a soldier of his rank and service. It also led him to commit a series of wrongs in his intoxicated state which adversely impacted on the good order and military discipline of the Regiment. Therefore, his case was recommended for disposal as undesirable soldier under Army Rule 13(3) item III (v) to higher headquarters i.e. Headquarters 23 (Independent) Armoured Brigade (A) vide this Regt Letter No. 15461509/MS/A dated 25 June 05 (A copy of letter dated 25.6.05 is annexed herewith as ANNEXURE R-6. Accordingly, competent authority issued Show Cause Notice No. 4036/3/A dated 05 June 05 to the petitioner vide Headquarters 23 (Independent) Armoured Brigade letter No. 4036/3/A dated 06th July, 05(The copies of Show Cause Notice dated 5.7.05 and the letter dated 6.7.05 are annexed herewith as ANNEXURE R-7 & R8 respectively). The show cause notice was served to the petitioner through Officer Commanding "A" Squadron vide 7th Light Cavalry letter No. 15461509/MS/A(PC) dated 10 July 05 asking reply to Show Cause Notice from individual by 13th July 05 (The copy of letter dated 10.07.05 is annexed herewith as ANNEXURE R-9. Reply to Show Cause Notice received from the petitioner is annexed herewith as ANNEXURE R-10.

12. That after sanction of competent authority with the petitioner was discharged from service locally Army Rule 13(3) item III (v) as "undesirable Soldier" w.e.f. 06 August, 05.

3. The challenge to the order of dismissal dated 6.8.2005 by the petitioner and the order of the movement dated 9.8.2005, annexure-P2 to the writ petition, is primarily on the ground that it is vocative of Rule 13 as no show cause notice was served upon the petitioner and in any case the so-called show cause notice issued to the petitioner did not contain the signatures and identification of the competent authority and there is total non-application of mind and the impugned order was not in conformity with the provisions of the Act and the Rules framed there under.

4. As we have already noticed that the petitioner himself has referred to the number of punishments of reprimand, severe reprimand and the fine during his service tenure. Five punishments were mentioned in the notice to show cause

dated June, 2005. The imposition of these punishments has been admitted by the petitioner and it is also not disputed that the orders of punishment right from 8th December, 2000 to 19th June, 2005 were not challenged or questioned by the petitioner departmentally or otherwise. In other words, these punishment orders have attained finality and they form an integral part of the service record of the petitioner. There is no doubt that the notice issued to the petitioner which he has placed on record as annexure P1, is not signed by any authority though it notices the name of Mr. Sumit Rana, Maj, OC"A Sqn. This would have been an irregularity with some consequences. But in the facts and circumstances of the present case, we are of the considered view that no prejudice has been caused to the petitioner as a result thereof. Though according to the petitioner, it is not clearly stated in the writ petition that he had submitted a reply but according to the respondents, the petitioner had accepted the said show cause notice and submitted a reply to the authorities on 11th July, 2005. The respondents have placed copy of the said reply as Annexure R-10 on record. and the translation of the said document written in Hindi reads as under:

It is humbly submitted that I, No. 15461509H LD Mahipal Singh have been serving under your able leadership for last 13 years. During my service I have committed numerous mistakes which are contrary to discipline. I beg pardon for the mistakes committed till date and assure you not to get involved in act of indiscipline again. I regret my past mistakes and now I am willing to serve with in the norms of discipline. Therefore it is my humble submission to you to pardon my past mistakes and give me only one more chance to serve in the army. I Along with my family members will be indebted for life for this kind help by you.

5. The respondents have also filed on record the letter dated 10th July, 2005 vide which the show cause notice dated 05/06th July, 2005 sent by Brig. A.K. Mehta with similar contents as that of annexure P1 was served upon the petitioner. It is in furtherance to the show cause notice the petitioner through his unit had submitted the reply. It may be noticed that the contents of both the show cause notices are similar. In the entire petition, the petitioner neither referred to the show cause notice dated 05th July, 2005 nor to the reply that he had submitted. In other words, the petitioner is guilty of "Suppressio Veri and Suggestio Falsi". The medical authorities/ doctors repeatedly described the petitioner as a case of Alcohol Dependence Syndrome which cannot be said to be attributable or aggravated by army service. Despite the fact that the petitioner was subjected to a medical board which formed the same opinion, the respondents served a show cause notice in terms of Rule 13 (3) Item III (v) of the Army Rules and mentioned all the punishments which in fact have been mentioned by the petitioner in the writ petition itself. A person who within a period of four years has been punished five times and is consistently found to be unfit for army service even by the medical authorities, can hardly be retained in army. The decision of the authorities taken vide order dated 6th August, 2005, thus, does not suffer from the vice of arbitrariness or violation of rules and of principles of natural justice. The petitioner, in fact, has not even denied the contents of the

said show cause notice even in the present petition. Vide letter dated 23.11.2005, the respondents had even informed the petitioner that in spite of the repeated advice given to him at the time of discharge, the petitioner had not subjected to re-medical board, stating that the disability of alcohol dependence syndrome was no disability attracting the grant of disability pension. He was again required to report to the regiment and get the re-medical board done for final settlement of accounts. Even this was not done by the petitioner. The petitioner has failed to bring to the notice of the court as to which provision of the Army Act or Rules framed there under has not been complied with by the respondents. In fact, the petitioner is guilty of suppressing the facts which were within his knowledge and he had intentionally withheld the same in the writ petition. Thus, the petitioner cannot claim any relief under Article 226 of the Constitution of India which is a discretionary and equitable jurisdiction. We have no reason to doubt the findings of the medical board as well as the findings of the competent authority. In terms of Rule 13(3) item (III)(v), Brigade/Sub-Area Commander is the competent authority to pass an order of discharge. In the present case, the show cause notice was served on the orders of Brig. A.K. Mehta and who ultimately passed the order in accordance with the provisions of law.

6. Thus, we find no merit in this petition and the same is dismissed while leaving the parties to bear their own costs.