

(2008) 11 DEL CK 0191
In the Delhi High Court
Case No : WPC No. 12900 of 2004

Lokesh Kumar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-11-2008

Acts Referred:

Navy Act, 1957 — Section 51, 77(2)

Navy Regulations — Regulation 274, 276, 276(4)(C), 278, 278(2)

Penal Code, 1860 (IPC) — Section 379

Citation : (2008) 11 DEL CK 0191

Hon'ble Judges : Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Y.D. Nagar, for the Appellant; Shilpa Singh, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The petitioner was enrolled in the Indian Navy as a Direct Entry Sailor in the trade of (DE-MET) at INS, Delhi at New Delhi and was, thereafter, directed to report at INS, Chilka in the state of Orrisa. He joined the training ship of the Indian Navy, INS Ranjit at Vishakhapatnam on 21.2.2000 and after completing the said training he was retained for further training of his trade between 2.3.2000 to 5.5.2000. However, while undertaking the aforesaid training he was declared failed in three subjects. He then availed leave w.e.f. 28.7.2000 to 28.8.2000. Thereafter he was again retained for training but again could not succeed and was declared failed in two subjects namely Photo and ATC again which he could not clear even earlier. It was in these circumstances the School of Naval Airmen CHILKA, forwarded recommendation for discharge of the petitioner to the Chief Staff Officer Training by his letter dated 28.2.2001 and the Headquarters of the Naval Command, Kochi accorded their approval for the discharge of the petitioner by orders dated 12.3.2001 which the petitioner states was not in accordance with the Regulations 276 & 278 of the Navy Regulations. Thereafter the petitioner was discharged from service. His representation dated 15.5.2001 and a reminder dated 20.2.2004 is stated to have not been disposed of.

2. The petitioner has filed the present writ petition seeking directions to the respondents to quash and set aside the impugned order of discharge being irregular/illegal and having been issued without following the process as prescribed and in accordance with the Navy Regulations 276 & 278 and other policy letters issued from time to time. He has also sought a writ of mandamus directing the respondent to reinstate the petitioner with effect from the date of discharge i.e. 31.3.2001 with all the consequential benefits.

3. According to the respondents the petitioner failed in the final examination in the Basic Training at INS, Chilka. It has been submitted that the petitioner had passed his basic training course only after re-examination. It is further submitted that after the completion of the training at INS Chilka he reported on 28th February 2000 for his basic Air Course No. 40:387, at SFNA. There in the first training cycle during the period from 28 February to 13th May 2002 he obtained 32/100 marks in General Airmanship, 12/50 marks in Fire Fighting, 03/25 marks in Safety Equipment, 02/25 in Photo and 10/25 in Meteorology. The petitioner thus failed in five subjects. He was re-batched to basic Air Course 40:439 (04 September 2000 to 18 Nov 2000) after giving the statutory suitable warning and opportunity to improve as per Regulation No. 278(2) of Regulation for Navy Part III.

4. It is submitted that in the second attempt the petitioner obtained 20/50 marks in ATC, 10/25 marks in Photo and 04/50 in Education. The petitioner having failed in 03 subjects in second attempt with the re-batched basic air course, he was relegated. He was also again given statutory warning to show improvement in his academic performance as per the regulations on the subject. Thus the petitioner was given adequate opportunity to improve himself and pass Basic Air Course but he failed to do so.

5. As per respondents the petitioner was to be re-batched for further attempt to pass the required basic air course, he showed absolute disregard for service discipline. He was found involved in a case of theft and the petition unauthorisedly left the training establishment at 1230 hours on 12th December 2000 without any information and without any permission. He was marked absent and he did not join his training. His father was informed telegraphically with request to direct his son to report for duty forthwith, failing which a warrant for arrest would be issued. He joined back on 21 Dec. 2000 after absenting himself unauthorisedly. Thereafter, he was tried summarily by the Commanding Officer u/s 379 of the Indian Penal Code read with Section 77(2) of the Navy Act, 1957 and Section 51 of the Navy Act, 1951, the petitioner had also admitted his guilty of committing theft and he was awarded the following punishment vide INS Garuda Warrant No. 01/2001 dated 12 Jan 2001:

- i. Solitary confinement in Cell for 14 days(No. 8);
- ii. Mulcts of Pay and Allowances for 9 days (No. 6);
- iii. Stoppage of leave for 40 days (No. 12)

6. In view of the above points, the Commanding Officer-in-charge after satisfying himself to Discharge the petitioner from service in accordance with Regulations Navy, Part III, Article 278(4)(C) for the petitioner having continued to show disinterest in service and who had in a statement indicated his inability to qualify the course Basic Airmanship Training, made the recommendation for his discharge to the Flag Officer Commanding-in-Chief (for CTO Aviation), Headquarter Southern Naval Command, Naval Base, Kochi-682004.

7. The case of the petitioner was examined by the Headquarters, Southern Naval Command and the approval to discharge him from Naval Service in accordance with the Regulations Navy Part III, Article 278(4)(c) was accorded and the same was communicated vide letter dated 12th March 2001.

8. The petitioner was a trainee and was during probationary service and was discharged as found unsuitable under the order of the competent authority.

9. We have heard the learned Counsel for the parties and have perused the records. We have also gone through the short synopsis/written arguments filed on behalf of the petitioner as well as the respondents. A bare reading of statutory regulation 274 framed under the Navy Act shows that unsuitable, incompetent or undesirable sailors can be discharged under Regulation 278 which reads as under:

278. Unsuitable, incompetent or undesirable Sailors.- If the Commanding Officer finds that any sailor of the ship's company is unable, either through mental or physical incapacity or through incompetence, to perform the duties of the lowest rate in his branch to which he can be disrated, or if the retention of any sailor is considered undesirable on grounds of conduct or character, he shall take the appropriate course among the following:

(a)....

(b)....

(c) Any sailor whose efficiency, physical condition or value to the service becomes materially impaired may be recommended for discharge under this clause.

(Emphasis supplied)

10. In the present case, for the reasons stated above i.e. non-clearance of the training papers in respect of basic air course despite giving of a statutory warning for which even the petitioner was re-batched for enabling him to further attempt to pass required basic air course, the petitioner showed absolute disregard for service. He was also found involved in a case of theft and unauthorisedly left training without any information and without any permission for which he was marked absent. His father was also informed telegraphically to direct his son to report to duty forthwith. It is only, thereafter, he joined at 21.12.2000 when he was tried summarily by the Command Officer u/s 379 of the Indian Penal Code read with Section 77(2) of the Navy Act, 1957 where the

petitioner even admitted his guilt of committing theft. It was, in these circumstances, that he was found undesirable for the job. His case was examined by the Competent Authority who recommended his discharge under Regulations 278(4)(C) of the Navy Regulations Part III (Supra). In fact, before the discharge of the petitioner, the permission was also obtained from the Flag Officer Commanding-in-Chief for CTO. It was only, thereafter, the petitioner was discharged from Naval service on 31.3.2001 under the orders of the Headquarters issued by the competent authority.

11. In these circumstances, we find no merits in the submissions made by the learned Counsel for the petitioner more so when there is no procedural infirmity in the discharge of petitioner. There is no merit in the case of the petitioner, an undesirable sailor whose discharge is permissible under Regulation 276(4)(C) Supra.

12. The writ petition is dismissed with costs of Rs. 2000/- to be deposited with Delhi High Court Legal Services, Committee within a week.