

(2011) 01 DEL CK 0485
In the Delhi High Court
Case No : Writ Petition (C) 6309 of 2010

Manas Malara

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0485

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : K. Ramesh Retd, for the Appellant; A.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioner was selected as a cadet at the National Defence Academy, Khadakwasla on 03.07.2007 and joined the Academy; on a date not disclosed.

2. Notwithstanding Petitioner being good at sports, was found to be a trouble some cadet. Breaking the rules of the Academy he consumed alcohol and noting that various warnings had been administered to him from time to time, taking a serious view of Petitioner having consumed alcohol on 29.03.2009, he was relegated from 118 Course to 119 Course, intimation whereof was given to Petitioner"s father.

3. Unfortunately, for the Petitioner he did not make any amend, evidenced by the fact that thereafter various warnings and advisories issued to him stand recorded in his record profile. Another incident took place on 24.07.2010 when Petitioner was found to be in possession of a mobile phone and other electrical equipment which he was not supposed to possess.

4. Taking note of the incident and also considering that after he was relegated once and in spite of various warnings and advisories being issued there was no improvement, the Petitioner was relegated for a second time to the 120th Course.

5. Simultaneously it was detected that the Petitioner accumulated 190 negative points and which attracted the policy No. 010001-CDT and the policy dated 28.07.2006 as per which the cadet can be recommended for withdrawal under Para-12 of the policy, action was taken and order was communicated to the father of the Petitioner and also the Petitioner that he was recommended to be withdrawn from the Academy.

6. The Petitioner has admittedly earned 190 negative points, which negative points being awarded to him has not been questioned by the Petitioner. The Petitioner also does not dispute the incident dated 24.07.2010 when he was found to be in possession of a mobile phone in his cabin as also a mobile broadband data card and Tata Photon Plus for which he earned 21 restrictions. The justification of the Petitioner is that he had detected the same with a fellow cadet and being a Division Cadet Captain had seized the same but before he could hand over the same to the superior officer, the same were recovered from him, is unbelievable for the reason the recovery thereof was not only from the person of the Petitioner but was when the Petitioner was in his cabin. We note that the Petitioner never so stated till he filed the instant petition.

7. Thus, if the 21 restrictions inflicted upon the Petitioner pertaining to the incident dated 24.07.2010 are to be taken into account, undisputed position would be that the negative points earned by the Petitioner would be 190.

8. The only question which needs to be considered is whether name of the Petitioner could be recommended for being withdrawn as a cadet from the Academy.

9. Para-12 of the policy pertaining to withdrawal reads as under:

2. A cadet be recommended for withdrawal, on any of the following grounds:

(a) Failing to make the grade in academic subjects in spite of relegations and warnings for withdrawals.

(b) Failing to achieve the minimum standard in outdoor training, service subjects, or sports in spite of relegations and warnings for withdrawal.

(c) Failing to achieve the acceptable standards in basic character and other officer-like-qualities in spite of relegations and warnings for withdrawal.

(d) Disciplinary grounds.

(e) On being Absent without leave for more than 30 days.

(f) Medical grounds.

(g) After one relegation in a particular semester, if he is recommended for relegation again in the same semester for reasons other than medical.

(h) After having been relegated twice during his stay in the academic, and recommended for relegation again for reasons other than medical.

(i) If a cadet is required to be relegated more than three times on medical grounds.

10. Suffice would it be to state that under Clause (h) of Para-12 of the policy a cadet having been relegated twice during his stay in the Academy would be liable to be recommended for withdrawal if he is recommended for relegation again for reasons other than medical.

11. The contention urged was that the misdemeanour dated 24.07.2010 was the cause of the second relegation and thus the same could not be taken into account to relegate the Petitioner for the third time.

12. We do not agree with the submission for the reason relegation of a cadet of a misdemeanor is a facet different than the facet of a candidate accumulating more than 180 negative points, which itself necessitates further relegation, as per para 58(d)(iii) of the policy No. 010001-CDT.

13. To put it differently, it may happen that due to a misdemeanour the candidate suffers further disability of crossing the mark of 180 negative points. This would mean that two consequences will follow. One would be strictly in relation to the misdemeanour and the other would be the cumulative result of negative points earned.

14. The record of warnings, photocopy whereof placed before us shows a most unhealthy picture, notwithstanding the Petitioner being a good sports person and otherwise a keen hard working boy. It evidences the Petitioner to be of a temperamental nature and prone to indiscipline. We may note that the concept of 190 negative points and as a consequence further relegation is as per para-58 (d) (iii) of the punishment policy No. 010001-CDT.

15. The writ petition is dismissed but with no order as to costs.