
(2005) 10 DEL CK 0034
In the Delhi High Court
Case No : WP. (C) No. 2065 of 2004

NC(E) Raja

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-10-2005

Acts Referred:

Air Force Rules, 1969 — Rule 15(2), 15(2)(K), 24
Constitution of India, 1950 — Article 226

Citation : (2005) 10 DEL CK 0034

Hon'ble Judges : Mukul Mudgal, J; H.R. Malhotra, J

Bench : Division Bench

Advocate : Narender Kaushik, for the Appellant; Rajesh Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

1. Rule. With the consent of Counsel for the parties the petition is taken up for final hearing.

2. This writ petition challenges the discharge of the petitioner from service upon incurring 4th red entry for repeated overstay after the petitioner's leave expired on 2.4.2002. The relevant policy for a habitual offender on consideration for discharge under Rule 15 (2) (g) (ii) of the Air Force Rules, 1969 reads as follows:

(a) Total number of punishment entires six and above (including red and black ink entires).

(b) Four red ink punishment entires.

(c) Four punishment entires (red and black ink entires) incurred for repeated commission of any one specific type of offence such as disobedience, insubordination, absence without leave, breaking out of camp, offences involving alcohol, mess indiscipline, use of threatening and abusive language.

3. The petitioner, on having been incurred three punishment entires, was duly

warned in writing by his Commanding Officer on 20.2.2002 to desist from further acts of indiscipline as any additional punishment entry would entail his discharge from service under the habitual offenders policy.

4. Inspire of the aforesaid warning the petitioner incurred another entry on account of punishment imposed on him on account of over stay of 30 days inspire of the expiry of his leave on 2nd April, 2002.

5. Since the petitioner after incurring four punishment entires was to be categorized as habitual offenders, as per the aforesaid policy a show cause notice was issued to him on 25th September, 2002 asking him to show cause as to why he should not be discharge from the service under Rule 15(2)(K) read in conjunction with Rule 15(2) of the Air Force Rules, 1969. In reply to the show cause notice the petitioner has pleaded as follows:

My overstay of leave was due to domestic and financial problems. I had difference with my wife/in-laws. They had the intention of demanding compensation from my salary which I was not agreed to. They threatened me with divorce and annulment. To counter them I was under the impression that I neednot pay them in case of not being an employee anymore. So I did not resume back after my leave. After returning, I was counseled by CO and was informed about my having to pay the compensation even being jobless. He also made me refuse my commitments towards my children and also towards my aging parents.

Now at this juncture I would like to state that I have been working to utmost satisfaction of my seniors and have now realised my mistake and understood the seriousness of the situation. I further state that I sincerely promise to abide by the rules and serve in a distinguished way. Hence I may please be excused for my past mistakes and give a fresh chance to settle in my life and serve the nation with pride. It will be a great solace to my entire family and will ever remain indebted to the service.

6. Petitioner's reply was not found satisfactory and his services were discharged w.e.f. 9th January, 2003 vide annexure R-5 dated 23.12.2002.

7. The order of discharge has been challenged by the petitioner in the present writ petition. The learned Counsel for the petitioner has contended that the very harsh view has been taken for recording his 4th red ink entry because during that period while he was overstaying as his father had died. He has submitted that a more humanitarian approach should have been adopted in the petitioner's case. However, in the reply to the show cause notice the plea of father's illness was not taken by the petitioner as is evident from the above extract. The petitioner's overstay started from 2nd April, 2002 and ended on 2nd May, 2002 when the petitioner rejoined his service. The Petitioner's father died on 18th May, 2002 for which he had been duly granted leave. The plea of father's illness had not been taken in reply to the show cause notice and Therefore cannot now be urged as a ground. In any event the death of the father on 18th May, 2002 is

later than the period of absence which ended on 2nd May, 2002. This plea cannot be permitted to be canvassed for the first time in the writ petition and appears to be an afterthought. The impugned order accordingly was passed on the existing Air Force policy after petitioner incurred 4th red entry and accordingly cannot be said to be vitiated in any manner so as to warrant any interference under Article 226 of the Constitution of India.

8. The petitioner has also relied on a judgment of this Court in Cpt. Satyvir Met. Asstt. Vs. Chief of Air Staff, . The relevant paragraph of the said judgment is as follows:

Normally, the original record of the proceedings conducted under Rule 24 are to be maintained by the respondent though it has been contended by the respondent that these proceedings are in the nature of oral proceedings and no record is to be maintained. When an officer or a person against whom an action is to be taken, principle of natural justice demand that the record of such proceedings must always be maintained. Even if we assume that the proceedings were oral in nature but in view of the affidavits which have been filed on record, the stand taken in the affidavit of Air Commodore C.N. Ghosh is inconsistent with the affidavit of Udaibhan Singh. Udaibhan Singh who was the immediate superior officer of the respondent has specifically stated that he has granted permission to the petitioner to come late for duty on 16th July, 1996. No affidavit of Wing Commander Gurbir Singh, Medical Officer in terms of the last order has been filed for which a request has been made by the Counsel for the respondent for more time. We cannot agree to this request as sufficient time has already been granted to the respondent. In view of the fact that Annexure VII at page 30, a certificate of Gurbir Singh has been filed by the petitioner and the same has not been controverted by the respondent and in view of the Udaibhan Singh's affidavit, which specifically mention that he was granted leave to come late, there is infringement of the right of the petitioner as he has been punished without being heard.

9. The above judgment relates to violation of principle of natural justice and maintenance of original record under Rule 24. The principles laid down could not be applicable to the present case as there is no allegation pertaining to non maintenance of records. In so far as violation of principles of natural justice are concerned, the petitioner was not only given an advance warning after incurring the 3rd red ink entry on 20.2.2002 but was also issued a show cause notice on 25.9.2002 asking him to show cause why his services should not be terminated as per the policy in force. These in our view are sufficient safeguards and in consonance with the principle of natural justice.

10. The writ petition thus has no merit as the petitioner's discharge from service is in accordance with the prescribed procedure and the existing policy stipulated under Rule 15(2)(g)(ii) of Air Force Rules and is thus dismissed.