
(2006) 10 DEL CK 0173
In the Delhi High Court
Case No : WP (C) . No. 1793 of 2001

Om Prakash Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Air Force Act, 1950 — Section 65, 71
Air Force Rules, 1969 — Rule 15(2), 18
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 304A, 338

Citation : (2006) 10 DEL CK 0173

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

Bench : Division Bench

Advocate : Ajay Bhalla, for the Appellant; Jyoti Singh and Ankur Chhibbar, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—The petitioner was enrolled in the Indian Air Force on 7.10.1988 in the trade of Mechanical Transport Driver (MTD). He was promoted to the rank of Corporal. On 10.3.1994 there was an accident involving a service vehicle which was being driven by the petitioner at Shillong. The aforesaid incident resulted in a District Court Martial (DCM for short) of the petitioner which was held from 25.4.1996 to 15.5.1996. Before the trial of the DCM the petitioner was served with the warning letter dated 10.8.1994 by Station Commander of 509 SU AF in terms of headquarter policy letter AIR HQ/C23406/685/PS of 14.8.1984. The petitioner was duly informed in terms of the aforesaid letter dated 10.8.1994 that he had been placed in the category of potential offender and he was being given another opportunity to mend himself and warned that another punishment entry would bring the petitioner under the category of habitual offender which would result in his discharge from service under Rule 15(2)(g)(ii) of the Air Force Rules, 1969. Meanwhile, the DCM against the petitioner assembled on 25.4.1996 and concluded on 15.5.1996. The DCM found the petitioner guilty of the offence

and awarded him the following sentence:

(a) to be reduced in the ranks,

(b) to undergo detention for 6 months

(c) to be put under stoppage of pay and allowances until he shall have made good to the Central Govt. a sum of Rs. 500.

2. The petitioner carried out his entire sentence and according to him he performed well in service and in fact in his last annual assessment he was assessed as an "Excellent Airman". The petitioner was served with the show cause notice dated 6.3.1997 calling upon him to show cause as to why he should not be discharged from service under Rule 15(2)(g)(ii) of Air Force Rules, 1969. The petitioner duly replied to the show cause notice vide his letter dated 2.4.1997, however, to his surprise he received AIR FORCE RECORD OFFICE LETTER/2501/1/RW (DIS) dated 2.12.1997 whereby he was discharged from service. The petitioner served a notice dated 27.3.1998 upon the respondents for setting aside the order of discharge. Aggrieved by the letter dated 2.12.1997 the petitioner filed the present writ petition under Article 226 of the Constitution of India praying that directions, orders or writ in the nature of mandamus be passed to set aside the impugned discharge order dated 2.12.1997 passed by the competent authority, as null and void being illegal as ab initio and to direct the reinstatement of the petitioner in service with full back wages and all benefits.

3. At the very outset it was very fairly contended by learned Counsel for the petitioner that he did not wish to challenge the policy of the Air Force dated 14.8.1994. It is submitted by learned Counsel for the petitioner that the letter of discharge dated 2.12.1997 issued to the petitioner is in total violation of the principles of natural justice and fair-play. It is argued that the petitioner was issued a letter of warning dated 10.8.1994, in terms of the said letter the petitioner was informed that as per his conduct sheet he had been punished for three offences incurring three red entries and in case of another entry he would be liable to be discharged from service under Rule 15(2)(g)(ii) of the Air Force Rules 1969. It is submitted that after receipt of the warning letter the petitioner did not commit any offence, although the petitioner was involved in an accident in Shillong on 10.3.1994 prior to the warning letter dated 10.8.1994. The DCM had only punished the petitioner relating to the accident in Shillong dated 10.3.1994, which was admittedly much before the issuance of the warning letter. Since no offence was committed after 10.3.1994 the letter of discharge dated 2.12.1997 is without any application of mind by the competent authority, the same has been issued in a mechanical manner without scrutinizing the facts and circumstances of the petitioner's case and is liable to be quashed. The learned Counsel further submitted that the discharge letter is against the letter and spirit of the Air Force Policy dated 14.8.1984 in as much that the respondents had to take into account the punishment entry incurred by the petitioner for an offence committed by the petitioner prior to the issuance of warning letter.

4. The learned Counsel for the respondents contended that the petitioner was an indisciplined member of the Force and a habitual offender. Based on the policy dated 14.8.1984 the petitioner was identified as a potential habitual offender as he had incurred three red ink entries on his conduct sheet and accordingly he was issued a warning letter on 10.8.1994. After the warning letter the petitioner was awarded a punishment by the DCM on 15.3.1996 for indulging in an act of indiscipline on 10.3.1994. The petitioner was awarded the following punishment:

(a) to be reduced to the ranks,

(b) to undergo detention for 6 months; and

(c) to be put under stoppage of pay and allowances until he shall have made good to the Central Govt. a sum of Rs. 500.

5. Admittedly these punishments were awarded after the issuance of the warning letter dated 10.8.1994. As a result of the punishment awarded on 15.3.1996 by the DCM the total number of red ink entries in the conduct sheet of petitioner became four and accordingly the case of the petitioner was processed by 33 Wing, Air Force through Headquarters South Western Air Command IAF for discharge under the habitual offenders category. The petitioner was thereafter issued a show cause notice on 6.3.1997. The learned Counsel for the respondent submitted that it is not the date when the act of indiscipline took place which is 10.3.1994 but the date when the punishment was awarded which is relevant.

6. We have heard the learned Counsel for the parties and perused the original record, which was produced by the respondents. The policy dated 14.8.1984 was formulated after a project study on airmen was conducted by the Institute of defense Management during the period 1978-1983. It is inter alia brought out that there was a specific hard core group of airmen in the Air Force (about 1288), who had been contributing regularly and predominantly to the annual offence statistics in the Air Force, year after year. In order to stop this trend amongst the airmen a policy was formulated by the Air Force Headquarters dated 14.8.1984. While formulating this policy it was kept in mind that the offender should be given a fair chance to reform. In the warning letter dated 10.8.1994 the petitioner was informed that he had been punished for 3 offences incurring 3 red ink entries till the date of the warning letter. It would be useful to reproduce the warning letter at this stage:

509U/C 4751/12/P1

STATION HEADQUARTERS

WARNING

1. Whereas, in pursuance of Air Headquarters policy issued vide their letter No. Air HQ/C 23406/685/PS dated 14 Aug 84, it is revealed from your conduct sheet of service documents that you have been punished for three offences incurring THREE red ink entries till date.

2. Your conduct had adversely affected the general morale and discipline of the service and you are setting a poor example for the others. This malady, thus need to be contained.

3. I, hereby, when you to refrain from committing any more offence hereafter, which may lead to another punishment incurring either a RED INK or BLACK INK entry in your records. You are further informed that, you are placed under the category of POTENTIAL OFFENDER AND YOU are getting another opportunity to mend yourself and secondly an addition of another punishment entry (RED) will bring you under the category of HABITUAL OFFENDER, which may result in your discharge for the service under Rule 15(2)(g)(ii) of Air Force Rules, 1969.

Given under my hand at 0900 hours on the 10th day of August 1994.

(B. Kumar)

Group Captain

Station Commnt

721276-F CPL Sharma OP MTD

7. What is important to note is that the warning letter dated 10.8.1994 did not make any mention of the accident dated 10.3.1994, and rightly so since as on the date of the warning letter the petitioner had not incurred any other punishment besides the 3 red ink entries.

8. The argument of the learned Counsel for the petitioner that after the warning letter he did not commit any offence does not hold good in view of the fact that although the accident had taken place on 10.3.1994, but admittedly the DCM with respect to the said accident was held from 25.4.1996 to 15.5.1996, after issuance of the warning letter. The finding and sentence of the court was confirmed only on 13.6.1996 which we have seen from the original record pertaining to the petitioner produced before us. It shows that at the time when the warning letter was issued there were only 3 red ink entries against the name of the petitioner. It is only after the petitioner was tried by the DCM and he was held guilty and, thereafter, the DCM was confirmed only then the forth red ink entry was made in the record of the petitioner. Therefore, to say that on the date of the letter of warning the petitioner had been punished 4 times with four red ink entries, is factually incorrect. The warning letter was explicit and it categorically points out that: "you are getting another opportunity to mend yourself and secondly an addition of another punishment red ink will bring you under the category of habitual offender, which may result in your discharge from the service under Rule 15(2)(g)(ii) of the Air Force Rules, 1969".

9. It is abundantly clear that the incident of an accident of 10.3.1994, for which DCM was held on 25.4.1996, itself cannot be treated as a punishment. What is relevant is when the punishment (red ink entry) was awarded to the petitioner. A show cause notice was issued to the petitioner on 6.3.1997. This show cause

notice clearly mentions that the petitioner was awarded a punishment on 15.5.1996 by the DCM. In case the warning letter had taken into account the incident of 10.3.1994 this Court could have been persuaded by the argument of the learned Counsel for the petitioner. In WP(C) No. 1450/2001 titled Capt. Raj Kumar Singhal v. UOI and Anr. decided on 27.7.2006 this Court held as under:

The court cannot lose track of the fact that the main ethos of the policy letter dated 14.8.1984 was to weed out habitual offenders among the airmen, as they had an adverse effect on the general discipline and administration in the Air Force. The conduct-sheet which has been filed by the respondents, as Annexure R-1, clearly shows that the petitioner was completely indisciplined and despite warning letter dated 22.12.1987 he refused to make any amends. The acts of indiscipline of the petitioner are totally unbecoming of a member of the Armed Force. The respondents have followed the procedure which is required to be implemented, as per the policy of discharge. Petitioner was duly warned vide letter dated 22.12.1987 about the implications of his persisting in the acts of indiscipline and even one additional punishment would result in discharge from the Air Force under the provisions of Rule 15(2)(g)(ii) of the Air Force Rule, 1969. The petitioner was thereafter issued a show cause notice and was discharged from service. Having perused the conduct-sheet of the petitioner, the warning letter dated 22.12.1987 and show cause notice dated 4.10.1989, we find that the respondents completely followed the procedure, as per the policy dated 14.8.1984 for discharge of the petitioner. The Hon'ble Supreme Court of India in the case of Union of India and others Vs. Corporal A.K. Bakshi and another, has held that the basic idea underlying the Policy for Discharge is that recurring nature of punishments for misconduct imposed on an airman renders him unsuitable for further retention in the Air Force. Suitability for retention in the Air Force has to be determined on the basis of record of service. Relevant portion of the same reads as under:

The punishments referred to in the Policy for Discharge are punishments that have been imposed for misconduct under the relevant provisions of the Act and the Rules. The Policy for Discharge envisages that in cases where an airman has been awarded such punishments six times, he is to be treated as a habitual offender and action for his discharge from service should be taken against him under Rule 15(2)(g)(ii) of the Rules. This action for discharge is not by way of punishment for the misconducts for which he has already been punished. The basic idea underlying the Policy for Discharge is that recurring nature of punishments for misconduct imposed on an airman renders him unsuitable for further retention in the Air Force. Suitability for retention in the Air Force has to be determined on the basis of record of service. The punishments that have been imposed earlier being part of the record of service have to be taken into consideration for the purpose of deciding whether such person is suitable for retention in the Air Force. The discharge in such circumstances is, Therefore, discharge falling under Rule 15(2)(g)(ii) and it cannot be held to be termination of service by way of punishment for misconduct falling under Rule 18 of the

Rules.

15. The plea taken by the respondents, thus is not without merit. The petitioner himself has been responsible for his acts of misconduct, has been awarded punishments and found to be unsuitable for retention in the Indian Air Force. We find no infirmity in the order of discharge dated 21.10.1993.

10. The petitioner was tried by the DCM held at 509 Signals Unit, Air Force from 25.4.1996 to 15.5.1996 on four charges. First and second charges were laid down u/s 71 of the Air Force Act, 1950 read with Section 304-A IPC for causing death by rash or negligent act. Third charge was also laid down u/s 71 of the Air Force Act, 1950 for causing grievous hurt to nine persons by doing an act so rashly or negligently as to endanger human life or the personal safety of others, punishable u/s 338 IPC. Fourth charge was laid down u/s 65 of the Air Force Act, 1950 for improperly driving service vehicle and thereby causing damage to the said vehicle to the extent of Rs. 55,230/-. The Court found the accused "guilty" of all the charges and sentenced him "To be reduced to the ranks; To undergo detention for six months; and to be put under stoppage of Pay and Allowances until he shall have made good to the Central Government, the sum of Rs. 500/-.

11. After going through the record we find that the petitioner has rightly been termed as a habitual offender and his conduct is unbecoming of a member of the disciplined force. At no stage the petitioner has challenged the red ink entries awarded from time to time.

12. For the foregoing reasons, we find no infirmity in the order of discharge dated 2.12.1997, in the result the present petition must fail. The same is dismissed, however, leaving the parties to bear their own costs.