

(2012) 09 DEL CK 0245

In the Delhi High Court

Case No : Writ Petition (C) No. 1587 of 2012

Pankaj Choudhary

APPELLANT

Vs

UOI and Ors

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Citation : (2012) 9 AD 395

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : R.K. Saini, with Mr. Vikram Saini, for the Appellant; Ashwani Bhardwaj, for the Respondent

Judgement

Gita Mittal, J.—The petitioner was appointed as Gentleman Cadet in the Indian Army on 14th April, 2008 by 20 SSB, Bhopal through the

UPSC's Combined Defence Service Entry. It is undisputed that at the time of his appointment, the petitioner was declared medically fit by the

Research & Referral Hospital of the Army at New Delhi where he had undergone the medical examination. The petitioner was then sent to the

Indian Military Academy (IMA) at Dehradun for undergoing the training course for a duration of eighteen months. The petitioner successfully

completed the first and second term of the training course. While undergoing the third term training between July, 2009 to December, 2009, in the

month of September, 2009, the petitioner suffered injury on his left shoulder while horse riding as part of the training. The petitioner was treated at

the Section Hospital of the IMA, Dehradun and was advised physiotherapy and rest. As a consequence of his inability to perform the requisite test

as well as exercises relating to the training because of his injury, at the end of the third term, in December, 2009, the petitioner was relegated to the

third term of the course and called upon to repeat the same. The petitioner has complained that for want of sufficient time for full recovery of the

injury, he could not successfully complete the third term and was again required to repeat the same from July, 2010.

2. It is undisputed that during this period as well, the petitioner was unable to do the physical exercises required to be undergone as part of the

training which included chin-ups and chest touches. He was consequently issued a letter of warning dated 2nd November, 2010 informing him that

he has been placed on the warning of withdrawal for failing the tests in this regard in the third attempt. As a consequence of the petitioner's

injury and inability to complete the requisite physical requirements of the training, the petitioner was issued a letter on the 1st of December, 2010

titled as "withdrawal" informing him that he stood withdrawn from the training and that he may be despatched home on a leave pending approval of

the withdrawal from the competent authority.

3. It is an admitted position that while awaiting approval of the withdrawal, the petitioner was consequently sent home immediately.

4. It is the petitioner's case that he has not been communicated the approval of the withdrawal as Gentleman Cadet from the Indian Army and

was awaiting the final decision thereon without any communication from the respondents. The writ petitioner states that he had approached the

respondents personally on a number of occasions to know the outcome of the above correspondence without any fruitful reply about the status of

the approval.

5. It has also been urged that as a result of the withdrawal and the despatch of the petitioner from the Academy, he has not been paid any stipend

since December, 2009 and that he was also unable to take up any job for the reason that he still stood on the rolls of the Army.

Aggrieved by the unfair and unwarranted negligence and the indifference on the part of the respondents, the petitioner has filed the instant writ

petition praying for directions to the respondents to forthwith take final decision with regard to the withdrawal of his appointment as Gentleman

Cadet from the Indian Military Academy. The petitioner also prays for a direction to the respondent to pay him salary & allowances from

December, 2010 till the date the approval of the withdrawal is communicated to

him.

6. The respondents were served with advance copy of the writ petition which appears to have motivated them to take steps in the matter. The

respondents, thereafter, issued a letter dated 27th March, 2012 to the petitioner informing him of the approval of the withdrawal. The petitioner

accepts that he has received the communication dated 27th March, 2012 and has thus prayed for compensation till the end of March, 2012.

7. In response to the notice to show cause, the respondents have taken a stand that the competent authority had approved the withdrawal of the

petitioner from his pre-commission training exempting the cost of the training which includes the stipend paid to him. It has been submitted that the

withdrawal was approved by the letter dated 11th February, 2011 of the Integrated Headquarters of the Ministry of Defence (Army), which has

been placed on record.

8. It is stated by Dr. Bhardwaj, learned counsel for the respondents, that the approval of the withdrawal was originally communicated to the

petitioner by the letter dated 11th February, 2011 and was re-sent on 27th March, 2012. Copy of the letter dated 27th March, 2012 has been

enclosed with the counter affidavit.

9. When the matter was heard by us on the 19th September, 2012, on request of learned counsel for the respondents, it was adjourned for hearing

today to enable the respondents to produce before this court records to manifest that the letter dated 11th February, 2011 was actually sent to the

petitioner dated 11th February, 2011. We are informed today by Dr. Bhardwaj, learned counsel for the respondents that the respondents do not

have any proof to support their contention that the communication was actually or at all sent to the petitioner.

10. It is trite that such like official communications are despatched against recorded delivery. The despatch and receipt of correspondence by the

authorities is also strictly maintained which position is not disputed before us. Therefore, the irresistible conclusion from the inability of the

respondents to produce any record to support their averment in the counter affidavit is that the communication was never sent to the petitioner who

has therefore remained under the belief that approval of his withdrawal from training is still awaited. The petitioner has been compelled to file the

present writ petition in these circumstances.

11. The respondents are also unable to dispute that given the situation where a withdrawal of the approval by the competent authority has not been

received, the person would continue to be on the rolls of the IMA and would be unable to seek alternative employment.

12. Mr. Saini, learned counsel for the petitioner has further submitted that even if it were to be held that the petitioner is not entitled to stipend, the

petitioner is entitled to compensation equal to the stipend he would have drawn if he was still pursuing the training given the fact that he has been

prevented from pursuing an alternative career.

13. The respondents were bound to have processed the approval expeditiously and communicated the same to the petitioner at the earliest. In fact,

they were duty bound to ensure that the communication was actually received by the petitioner.

14. Learned counsel for the petitioner has urged that the action of the respondents is negligent and mala fide. It has also been contended that a

completely false plea to the effect that the approval of the withdrawal was actually sent to the petitioner, has been taken on affidavit in the counter

affidavit which has been filed.

15. The petitioner has lost a golden career on account of injury suffered during training. His agony has been unfortunately compounded by the

respondents by keeping him in suspense about the status of his withdrawal and hence his employment. If he had been informed with expedition, the

petitioner could have picked up the loose ends and explored employment options available. We have no manner of doubt that the respondents

have acted negligently and have treated the entire matter with extreme casualness. We are also of the view that the petitioner has been wrongfully

and unfairly deprived of fruitful engagement and employment for the period from 1st December, 2010 to 31st March, 2012 (when the letter dated

27th of March, 2012 was received by him). We find substance in the petitioner's prayer that he deserves to be compensated for the negligence

and tardiness of the respondents and the amount equivalent to the stipend which the petitioner would have drawn if he was continuing with the

training, appears to be fair compensation for the loss which the petitioner has endured.

16. The petitioner has been compelled to initiate the legal remedy by writ petition which has also been necessitated for the inaction of the respondents. The petitioner is therefore entitled to costs of the present petition. We may note that given the false and unsupported stand taken in the counter affidavit, we were inclined to take action against the concerned officials for the same. However, for reasons of expediency, the same is not being directed in the present case. The respondents are directed to be vigilant and ensure that the stand taken in the counter affidavit is based on necessary and relevant records. In view of the above discussion, it is directed as follows:-

(i) the petitioner is deemed to have received the communication of the approval of his withdrawal by the dated 27th of March, 2012.

(ii) The petitioner is held entitled to compensation which is assessed at an amount equivalent to the stipend which the petitioner would have drawn if he had continued with the training between the period from 1st December, 2010 to 27th March, 2012.

(iii) The petitioner shall be entitled to costs of the writ petition which are assessed at Rs. 20,000/-.

(iv) The payment in terms of para (ii) & (iii) above shall be made to the petitioner within a period of two months from today.

(v) The petition is allowed in the above terms.