

(2007) 08 DEL CK 0148
In the Delhi High Court
Case No : WP (C) . No. 15118 of 2004

Rahul Ranjan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

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

Citation : (2008) 2 SLJ 368

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Keshav Kaushik, for the Appellant; Ashwani Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—The petitioner was enrolled in the service of Indian Air Force as an Aircrafts man in its non-technical stream and he along with other selected candidates was deployed for 24 weeks mandatory Joint Basic Phase Training Course (JBPTC) 1/2004 at Airman Training School, Belgaum. The training commenced from 19.01.2004 Due to his poor performance in the examination held during training, the petitioner was awarded Cease Training and discharge from the service of Air Force w.e.f 06.07.2004 under Clause 15 (2) (j) of the Air Force Rules, 1969 under the clause "Unlikely To Make An Efficient Airman". The petitioner in this writ petition has called in question an order of his discharge and has prayed for a writ of mandamus against the respondents directing them to produce his original answer-sheet of English paper of final examination and the entire training record and also to direct his reinstatement in the service of Air Force with all consequential benefits.

2. The grievance of the petitioner raised by him in this writ petition is that his answer-sheet in English paper of final test was not correctly evaluated by the respondents as he got to know on rechecking of his answer-sheet of English

paper that four answers, which according to him were correct, were not evaluated and that two marks were not added in total due to which he was wrongly shown to have failed in English paper in final test.

3. In response to notice of this writ petition the respondents have filed their counter affidavit and have specifically denied the assertion made by the petitioner in his writ petition regarding evaluation of his answer script of English paper in final test. It is contended that the petitioner was shown his answer-sheet at the time of Station Review Board and the petitioner after seeing his said answer-sheet made an endorsement thereon "seen and satisfied". It is further contended that the allegation of the petitioner that four answers were not evaluated and that two marks not added and that cross mark was put against the correct answer and further that aggregate of evaluated questions was 39 marks instead of 37 marks are completely baseless and without any foundation whatsoever. The respondents have referred to and relied upon the scheme of Joint Basic Phase of training and the mandatory requirement for the new recruits to appear and pass the periodical test as per schedule circulated to them at the time of joining the training. The stand of the respondents is that the petitioner was rightly discharged from the Air Force service during training as he failed to secure the required standards/marks in the term test as well as in the final test. This fact according to the respondents has been concealed by the petitioner in his writ petition.

4. We have heard learned Counsels for the parties and have also perused the original record including the answer script of the petitioner of English paper in final test which according to him was wrongly evaluated by the respondents. It is not in dispute that the petitioner was a fresh recruit recruited as an Aircrafts man in the Air Force and that he was discharged from service due to his poor performance in the examination during training. Joint Basic Phase of training, which the petitioner has undergone before his discharge, was planned to inculcate Militarism, Jointmanship and to prepare the new recruits for trade training. This training was aimed to instill discipline, foster camaraderie and Esprit de corps. The curriculum for the trainees was comprised of General Service Training (GST), English, Hindi, General Service Knowledge (GSK) and Basic Computer Training. General Service Training consisted of Drill Training, Endurance Training, PT and Games, Field Craft Training, Small Arms Training and other related topics. In General Service Knowledge (GSK), the trainees were to be taught the following steps:

- (a) Service Ethos
- (b) History of IAF
- (c) Military History
- (d) AF Law
- (e) AF Regulations

(f) General aspects of Health and Hygiene

(g) Airmen like Qualities.

5. During Joint Basic Phase of training the recruits/trainees were required to appear and pass the periodical test as per schedule given here-in- below:

(a) Diagnostic Test : Will be conducted after completion of one week of trg.

(b) Monthly Test : Will be conducted after completion of five weeks of trg.

(c) Term Test : Will be conducted after completion of nine weeks of trg.

(d) Pre-final Test : Will be conducted after completion of 14 weeks of trg.

(e) Final Test : One completion of 19 weeks.

6. While the new recruits including the petitioner were sent for training, training instructions were issued to them by which they were informed that if they would fail to make the grade in Basic Phase, they would be given "Cease Training and Discharge" from service. The instructions so issued to the trainees have been annexed with the counter affidavit filed by the respondents as Annexure R-1 at page 47 of the paper book. As per these instructions, if a trainee failed in any two of the tests mentioned above excluding the diagnostic test and monthly test, he was to be issued with a Show Cause Notice asking him to show cause as to why his training should not be ceased and he be discharged from service in the light of his poor performance in the tests. After obtaining reply to Show Cause Notice, all such cases of second time failure were to be processed for Cease Training and Discharge on academic grounds through Station Review Board in pursuance of Headquarters Training Command Air Staff instruction/various orders and instructions in Force. In the present case, the petitioner had failed in English paper in the term test as well as in the final test. In terms of the above referred instructions, the petitioner was served not only with the Show Cause Notice but also with two warnings in relation to his performance in the first term and final test in English paper before he was discharged from service vide order impugned in the present proceedings. The first letter of caution was issued by the respondents to the petitioner on 15.03.2004 and the same reads as follows:

LETTER OF CAUTION

1 It is to inform you that you have failed in first test held on 27th February, 2004 at this institute by scoring the marks as given below:

Subject	/Part	Full Marks	Marks obtained	Aggregate	%	Result (Pass/fail)
English	60	22	36.6	Fail	GSK 40 27 67.5	Pass
GSD	100	46	46	Pass		

2 You are advised and cautioned to concentrate on training and improve your performance, failing which suitable action will be taken against you Sqn.Cdr/Flt Cdr. For Stn Cdr....

(Signature of the trainee)

Date: 15th March, 2004

7. The second warning for improving the performance was given by the respondents to the petitioner on 23.04.2004 and the same reads as follows:

WARNING ON FAILURE IN EXAM TERM TEST CONDUCTED BY UEB

1 It is to inform you that performance in the training has been persistently low and you have been cautioned on 15th March, 2004 in spite of repeated cautions, extra coaching and opportunities granted. You have not improved in training.

2 Now, that you have failed in Term exam by scoring 31 marks out of 100 in English, you are hereby warned that CT and discharge will be consequence of any further failure on your part in any exams.

Sqn. Cdr

for Sfn Cdr.

Received the original copy of the warning letter.

Signature_____

Full particulars of the trainee_____

8. The Show Cause Notice dated 17.06.2004 served upon the petitioner was to the following effect:

SHOW CAUSE NOTICE

1 WHEREAS, you were enrolled as AC(U/T) in the IAF on 12th Jan, 2004 and assigned the trade of N/Tech.

2 AND WHEREAS, during you training you have failed three times in the following tests/examinations:

(a) First test in English 22/60

(b) Term Test in English 31/100

(c) Final UEB Examination English 37/100

3 AND WHEREAS, you were cautioned to improve your performance failing which suitable action will be initiated against you vide ATS/497/3/C dt. 15th March, 2004 (letter No. and date)

4 AND WHEREAS, you were warned vide ATS/497/3/C dt. 23rd April, 2004 (letter No. and date) that in case of further failure in any examination CT and discharge will be consequence.

5 AND WHEREAS, you have failed again in Final UEB Test (exams) after issue of the warning letter as specified in para 4 above.

6 AND WHEREAS, perusal of your training record indicates that you are a poor

material and not fit to become an airman.

7 NOW Therefore, you are to show cause as to why you should not be discharged from service under rule 15(2)(j) of Air Force Rules, 1969. Your reply to this show cause notice is to be submitted by you to your Commanding Officer within 10 days of the receipt of this show cause notice, failing which it shall be assumed that you have nothing to urge in your defense against your cease training and discharge from the service and further action will be taken accordingly.

CT/CO Encl.:

1 Copy of Cautionary letter.

2 Copy of Warning letter.

Received the original copy of this Warning letter

Signature:....

9. The petitioner had given reply to the above Show Cause Notice in which he admitted his having failed in English paper in the term test as well as in the final examination and the reason for his failure given by him in his reply was that he had failed in English paper because he came from Hindi background. The reply dated 28.06.2004 to the Show Cause Notice is at page 60 A of the paper book.

10. A reference to the above would make it evident that the respondents had given ample opportunities to the petitioner to improve his performance before the impugned order of discharge from service was passed against him. The petitioner has concealed all this information from the Court regarding the warnings and Show Cause Notice received by him from the respondents before his impugned discharge and he has also concealed from the Court that he himself had seen his answer script of English paper in final test and had made an endorsement thereon of "seen and satisfied". The information in this regard concealed by the petitioner from the Court was on a vital point affecting the decision of the case. Though the petitioner is not entitled to have the benefit of discretionary jurisdiction of this Court under Article 226 of the Constitution for his having concealed the material fact from the Court but still we have carefully examined and considered the contention of the petitioner on merits regarding wrong evaluation of his answer script of English paper in final test. We have ourselves seen his original answer script of English paper in final test produced before us by the respondents and on seeing the same we do not find any merit in the contention of the petitioner that four answers, which according to him were correct, were not evaluated at all or that there was a totalling mistake of two marks in the said paper.

11. We have further noticed an endorsement of "seen and satisfied" on the original answer script and the said endorsement is purported to be in his hand writing and bears his signatures. On being asked, the petitioner did not dispute the endorsement to the above effect contained on his original answer script of

English paper in final test that took place on 02.06.2004 In view of the facts that are available on record, it cannot be disputed that the petitioner had failed in the first term as well as in the final test in English paper and Therefore he was rightly discharged by the concerned authorities of the respondents in terms of training instructions circulated to the new recruits at the commencement of their training in January, 2004 For the foregoing reasons, we do not find any merit in this writ petition which fails and is hereby dismissed leaving the parties to bear their own costs.