

(2000) 08 PAT CK 0117
In the Patna High Court
Case No : C.W.J.C. No. 8872 of 1999

Sujit Kumar Jha

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Citation : (2000) 4 PLJR 648

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : Shashi Shekhar Dwivedi, Shambhu Sharan Singh, for the Appellant;
Ravi Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Prasad, J.—In this writ petition, petitioner is aggrieved by the order dated 2nd June, 1999, contained in Annexure-1, whereby and where under he has been communicated with the order of discharge from service under the provisions of AF Rules 1969 and has been advised to report to Unit immediately to fill up the discharge papers to facilitate in finalizing the NE benefits.

2. In short, the relevant facts are that the petitioner was initially appointed as Ground Training Instructor in the Indian Air Force and was enrolled on 26.10.1990. It is admitted that on account of being plied with free liquor, one or two act of indiscretion occurred by him under the influence of liquor for which he was appropriately punished. However, he claims that he mended his ways and continued to serve the Air Force with sincerity and obedience and no adverse entry of any kind was made against him between 1994 to 1998. It is stated that in latter part of 1997, the petitioner started facing mental problem and depression etc. and while he had come on leave, he got himself examined by Psychiatrist. He continued with the medical treatment. He also complained about his illness. His condition deteriorated on account of lack of medical aid. He was not fully capable to understand the things and sometimes used to forget to attend his duties. How ever, vide impugned order he was no. quired to report for

the purpose of his discharge within 14 days, and pursuant to the said letter he reported for duties, be in view of the order of discharge he was not allowed to join his duties. It is alleged that if at all they thought that the petitioner was not fit to be retained in service on account of his fluctuating mental condition he at least should have been given medical treatment with consequential benefits. According to the case of the petitioner, the order of discharge and the proceedings were arbitrary and non est the eyes of law being in gross violation the principles of natural justice.

3. Counter affidavit has been filed of behalf of the Respondents in which it is stated that the petitioner was discharged: from service by the impugned order of 14.6.1999 under the provisions of the Air Force Rules, 1969 Chapter III Rule 15 Clause (2) (g) (ii) as his service was no longer required being unsuitable for the Air Force and Air Headquarters' policy of Habitual Offenders circulated vide Air Headquarters letter no. Air HQ/685/Pt dated 14.8.1984. It is stated that the discharge under the above policy has already been upheld by various Court: including the Apex Court in the case Union of India & others vs. Corpora A.K. Bakshi and another, reported in J 1 1996(3) S.C. 310. In paragraph 7 of the counter affidavit, it is stated that the petitioner was referred to Psychiatrist Military Hospital, Danapur on 6.2.1999 of the request of his Commanding Officer to. Psychiatric evaluation to rule out any psychiatric illness. Petitioner was admitted for evaluation and finally decimate Psychiatric fit and hence discharged to 20.2.1999. The opinion of the Doctor has. been annexed as Annexure 2, in which the Doctor has found "no abnormality noted". It is stated that the petitioner had incurred three red and one black ink punishment entries for acts of indiscipline up to 7th December 1998, and, therefore, categorised as "POTENTIAL HABITUAL OFFENDER" in terms of Air Headquarters letter dated 14th August, 1984. The petitioner vide Annexure-3 to the counter affidavit issued on 7th December, 1998 was by way of warning given an opportunity to mend himself and that addition of one more punishment entry (red or black as applicable in his case) would result in his categorisation as "HABITUAL OFFENDER" in terms of Air Headquarters letter dated 14th August, 1984, and action will be initiated to discharge him from the service under Rule 15(g) (ii) of the Air Force Rules, 1969. However, the petitioner did not mend himself and incurred one red punishment entry on 10th December, 1998 and another red punishment entry on 9th March, 1999, and as such, his case was taken up before the competent authority for his discharge under Habitual Offenders Policy and accordingly the order of his discharge was issued. The allegation that he was not given proper medical treatment has been denied and it is stated that during 1998, the petitioner did not report to the Unit Medical Officer to complain about his mental illness. Later he was referred to Psychiatrist at Military Hospital Danapur for re-evaluation but was reported to have not been suffering from any abnormally, hence, according to the Respondents, the allegation of lack of providing adequate medical aid is incorrect.

4. With respect to violation of principles of natural justice, it is stated that the

charges levelled on the petitioner were fully investigated and the petitioner was given full opportunity to defend himself and when the petitioner was found guilty he was awarded with punishment. With respect to disability pension, it is stated that para 153 of the Pension Regulations for the Air Force, 1961 (Part-I) stipulates as "Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated from service on account of disability which is attributable to or aggravated by Air Force Service and is assessed at 20% or over." Further para 6 of the Entitlement Rules for casualty Pensionary Awards, 1982 states that disablement or death shall be accepted as due to air force service provided it is certified that (a) The disablement is due to a wound, injury or disease which : (i) is attributable to military service, or (ii) existed before or arose during military service and has been and remains aggravated thereby. This will also include the precipitating/hastening of the onset of a disability. Further, para 8 of the Entitlement Rules, 1982 stipulates that "Attributability/aggravation shall be conceded if casual connection between death/disablement and military service is certified by appropriate medical authority. It is asserted that in the instant case, the petitioner was not discharged from the Air Force because of any disability and he was discharged from Air Force service under the provisions of Rule 15(2) (g) (ii) of the Air Force Rules, 1969 as "His services no longer required being unsuitable for retention in IAF. The Supreme Court in Civil Appeal No. 164 of 1993 (Ex-Sepoy Mohinder Singh vs. Union of India) held that the findings of the Medical Board, which has physically examined the appellant, should be respected. It is submitted that the petitioner has been discharged from service under the Policy of Habitual Offender, hence not entitled for any retirement benefit.

5. Learned counsel for the petitioner has submitted that the impugned order suffers from the vice of non-compliance of the Rules of natural justice and thus, fit to be quashed on this ground alone. It has also been submitted that having regard to the mental condition of the petitioner he ought to have been given adequate medical treatment, but instead of doing so he has been arbitrarily discharged from service.

6. On the other hand Dr. Ravi Ranjan, learned Additional Standing Counsel appearing for the Respondents has submitted that despite adequate opportunity/warning the petitioner did not mend himself and earned punishment to warrant for the exercise of the power under the provisions of Air Force Rules, 1969 read with Air headquarters" Policy on Habitual Offenders circulated vide Air headquarters letter dated 14.8.1984, the validity of which has been upheld by the Apex Court also. As such, according to him there has been no violation of the principles of natural justice and the impugned order does not suffer from any infirmity. It is submitted that in view of the fact that the petitioner was examined at Military Hospital, Danapur, and that the Doctor did not find any abnormally the plea advanced on behalf of the petitioner that he ought to have been given adequate medical treatment is without any substance.

7. This court finds substance in the submission of the learned Additional Standing Counsel appearing for the Respondents. It is not denied by the petitioner that he was examined at Military Hospital, Danapur and the Doctor vide Annexure-2 to the counter affidavit opined "no abnormality noted". Moreover, the petitioner has been given adequate opportunity, so much so that vide Annexure-3 he was given warning that addition of one more punishment entry would result in his categorisation as Habitual offenders in terms of Air Headquarters letters dated 14th August, 1984, and that for the same action will be initiated to discharge him from service under Rule 15(2) (g) (ii) of the Air Force Rules, 1969, yet he did not mend himself. The services in Army Air Force and Navy in my opinion, deservs to maintain high discipline and the Habitual Offender cannot be allowed to continue in service.

8. Having regard to the facts and cum stances of the present case, the Court does not feel persuaded to interfered with the impugned order of discharge and the writ petition is, thus, dismissed but without costs.