

UNION OF INDIA AND ORS.

v.

RAJESH VYAS

(Civil Appeal No. 2668 of 2002)

FEBRUARY 7, 2008

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Service Law:

*Air Force Rules, 1969; r.15(2)(g)(ii)/Air Force Act, 1982;
S.82:*

Discharge of Airmen from service in terms of guidelines issued under Habitual Offenders Policy – Issuance of warning to Airmen to improve their conduct and behaviour – Before ordering discharge of delinquent airmen, a show cause notice was issued for committing further offence by them – Delinquent airmen discharged from service by competent authority after due service of show cause notice and consideration of reply in each case complying with relevant instruction in connection thereof – On facts, Courts below were wrong in holding that the reply to show cause notice was not considered by the authority – Hence, judgment of the Single Judge as also Division Bench of the High Court set aside – However, in the facts and circumstances of the connected appeal (C.A.No.2670 of 2002), Division Bench of the High Court rightly set aside order of Single Judge – No interference with the order of the High Court in that case called for.

Respondents filed writ petitions against the order of discharge passed by the appellants. The petitions were allowed by the Single Judge of the High Court holding that the order of discharge was passed by the authorities in clear violation of principles of natural justice. Appeals filed against the order of the Single Judge were dismissed by the Division Bench of the High Court upholding the view of Single Judge in four cases, against which present

A appeals were filed by the appellants.

Appellant-Union of India contended that the original records were produced before the High Court, which clearly indicate that show cause notice was issued; that the fact that each of such respondents had replied to show cause notice is also not disputed by respondents; that both Single Judge and the Division Bench of the High Court went wrong in holding that without consideration of the replies the order of discharge had been passed.

C Respondents submitted that the order of discharge does not indicate any consideration of reply to the show cause notice.

Dismissing Civil Appeal No.2670 of 2002 and allowing the other appeals, the Court

D HELD: 1.1 It appears that the Habitual Offenders' Policy was formulated by the appellants as a result of a project study on offences of 'absence without leave' and other offences committed by Airmen, which brought out the salient features regarding the existence of habitual offenders amongst Airmen in Indian Air Force. It was found that there was a specific hard core group of airmen in the Air Force who have been contributing regularly and predominantly to the annual offence statistics in the Air Force, year after year. This group of Airmen have been a strong source of adverse influence on the general discipline of other Airmen in the service. (Para - 7) [575-G, H; 576-A]

G .1.2 In terms of the Habitual Offenders Policy, warning had to be given to an Airman who was on the threshold and he was called upon to improve his conduct and behaviour and that in case he committed any further offence, and came within the purview of an habitual offender he would be liable to be discharged. In case he commits any further offence then would be given a show

H

cause notice and, thereafter discharge was to be ordered by the competent authority under r. 15(2)(g)(ii) of the Air Force Rules, 1969. (Para – 9) [577-E, F]

2. The materials relevant for the consideration of the reply given by the concerned officials are part of the record. There is no dispute that the original records were produced before the High Court. Though in the discharge order there is no specific reference to the consideration by the appropriate authority, as a matter of fact the reply to show cause notice in each case was considered. After due consideration of the reply, the recommendation was that the competent authority may be pleased to approve the discharge of concerned officials as unsuitable for retention in service. Various officials considered the matter and the competent authority finally accepted the recommendation for discharge under r.15(2)(g)(ii) of the Rules. Thereafter, discharge order was passed where it is categorically noted that the competent authority i.e. AOP was pleased to accord the approval of discharge of the concerned officials from service. In the discharge order it is also stated that instructions on discharge of a airman as contained in AFO 291/77, 40/89 and the letter of the Air Force Records Office dated 28.11.1991 were strictly complied with. The Single Judge and the Division Bench of the High Court were wrong in holding that the reply given to the show cause notice was not considered. The factual scenario is to the contrary. Hence, the judgments of the Single Judge and the Division Bench cannot be maintained and are set aside. (Paras – 11 & 12) [578-A-F]

3. So far as Civil Appeal No.2670 of 2002 is concerned there is no appearance on behalf of the appellant when the matter was called. In fact, he had filed an affidavit in response to the show cause notice stating that he had no explanation and any clarification to offer. That being so, Single Judge was not justified in allowing his writ

A petition. The Division Bench of the High Court was justified in allowing the Special Appeal filed by the appellant so far as he is concerned. Hence, in this case the order of the High Court needs no interference. (Para – 13) [578-F, G; 579-A]

B CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2668 of 2002.

From the Judgment and Order dated 26.09.2000 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Special Appeal (W) No. 771 of 1998.

C WITH

C.A. No 2669, 2670, 2671 and 2672 of 2002.

D R. Mohan, A.S.G., I. Venkatanarayana, Arvind Shukla, Kiran Bhardwaj, Ajay Sharma, B.K. Prasad and B.V. Balaram Das for the Appellants.

B.D. Sharma, Vyas and Dr. Aaray Lingaiah for the Respondent.

E The Judgment of the Court was delivered by

F **Dr. ARIJIT PASAYAT, J.** 1. These five appeals have a common matrix in the judgment of a Division Bench of the Rajasthan High Court at Jodhpur dated 26.9.2000. Eight Special Appeals were filed by the Union of India and Others under Section 18 of the Rajasthan High Court Ordinance, 1949 (in short the 'Ordinance'). Challenge in the Special Appeals was to the order passed by a learned Single Judge of the High Court allowing the writ petitions filed. It was held that the dispute in writ petitions was squarely covered in favour of the writ petitioners by a judgment of this Court in *Union of India and Ors. v. Corporal A.K. Bakshi and Anr.* (1996 (3) SCC 65). The High Court by the common impugned judgment upheld the view of the learned Single Judge in four cases and in two cases held that the appeals filed by the Union of India deserved to be allowed. In four cases filed by the Union of India before this Court,

the Division Bench upheld the view of the learned Single Judge and held that the order was passed in clear violation of the principles of natural justice. A

2. In the said appeals, stand of the Union of India is that show cause notice was issued to which reply was furnished by the respondent in each case and after consideration of the same, the order of discharge was passed. B

3. In the two appeals, which were decided in favour of the Union of India it was held that show cause notice was duly issued and there was no reply. Against one such order Civil Appeal No.2670 of 2002 has been filed. C

4. Learned counsel for the appellant-Union of India submitted that the original records were produced before the High Court. They clearly indicate that show cause notice was issued which fact was not disputed by the respondents. The fact that each of such respondents had replied is also not disputed. It is the stand of the Union of India that both learned Single Judge and the Division Bench went wrong in holding that without consideration of the replies the order of discharge had been passed. D E

5. In one of the appeals i.e. Civil Appeal No. 2668 of 2002 learned counsel for the respondents submitted that the order of discharge does not indicate any consideration of the show cause notice reply. In the other three cases, there is no appearance on behalf of the respondents. F

6. In appeal filed by Santosh Singh i.e. Civil Appeal No. 2670 of 2002 the High Court categorically found that show cause notice was not responded to. There is no appearance on behalf of the appellant when the matter was called. G

7. It appears that the Habitual Offenders' Policy was formulated as a result of a project study on offences of 'absence without leave' and other offences committed by Airmen made by the Institute of Defence Management, which brought out the salient features regarding the existence of habitual offenders H

A amongst Airmen in Indian Air Force. It was found that there was
a specific hard core group of airmen in the Air Force who have
been contributing regularly and predominantly to the annual
offence statistics in the Air Force, year after year. This group of
Airmen have been a strong source of adverse influence on the
B general discipline of other Airmen in the service. Some adverse
effects noticed were as follows:

- (a) serious adverse effect and influence on the general
morale and discipline, especially on the young airmen
joining various units from the training centers.
- C (b) Unit level administration was kept pre-occupied with
these chronic in discipline cases impinging on time
which was otherwise required for constructive activity.
- D (c) Very often, at some stage or the other, airmen from
this group were found to commit serious offences
not only within but also outside the Air Force, thereby
tarnishing the image of the service, and
- (d) Invariably many of these airmen were not performing
well in their trades also.

E 8. Hence, their overall contribution to the service was
negligible. By passage of time, some of these airmen have been
promoted and have attained the ranks of a senior Non-
Commissioned Officers' and thus, such senior staff were very
F poor example to others particularly the younger Airmen. Thus,
having regard to the existence of habitual offenders amongst
the airmen and the adverse effects of their repetitive acts of
indiscipline which undermined the general discipline and
administration of the Indian Air Force. Air Head quarters decided
G to lay down the Habitual Offenders Policy for discharging such
Airman prescribing the guidelines to deal firmly with such habitual
offenders. In paragraph 4 of the said policy it was prescribed
that those airmen; who met any one of the following individual
H criteria were to be treated as habitual offenders and considered
for discharge under Rule 15(2)(g)(ii) of the Air Force Rules, 1969

(in short the "Rules"):

- (a) Total number of punishment entries six and above (including Red and Black ink entries);
- (b) Four Red ink punishment entries; and
- (c) Four punishment entries (Red and Black ink entries includes) for repeated commission of any one specific type of offence such as dis-obedience, insubordination, AWL, breaking out of camp, offence involving alcohol, mess indiscipline, use of abusive/threatening language.

9. That the red ink entries are for punishment higher in the scale of the punishment under Section 82 of the Air Force Act, 1982 (in short the 'Act') while the black ink entries are for punishment lower in scale in Section 82. The detailed actions and procedure which were required to be followed to implement the policy for discharge are given in the appendix to the policy which was known as the "Procedure for Discharge". Habitual offenders who were not found suitable for retention in service were initially placed in two categories, (a) habitual offenders who have already crossed the criteria as laid down vide paragraph 4 (a), (b) and (c) of the policy guidelines, and (b) offenders who are on the threshold. Warning had to be given as per the procedure to an Airman who was on the threshold and he was called upon to improve his conduct and behaviour and that in case he committed any further offence, and came within the purview of an habitual offender he would be liable to be discharged. In case he commits any further offence then would be given a show cause notice and, thereafter discharge was to be ordered by the competent authority under Rule 15(2)(g)(ii).

10. As noted above, policy for discharge of habitual offender was considered by this Court in *A.K. Bakshi's* case (supra). After analyzing the policy, it was observed that the whole idea underlying the policy was to weed out the indisciplined personnel from the force. It was further observed that it was a

A discharge simplicitor and as such it cannot be held as termination of service by way of punishment for misconduct.

11. The materials relevant for the consideration of the reply given by the concerned officials are part of the record. There is no dispute that the original records were produced before the High Court. Though in the discharge order there is no specific reference to the consideration by the appropriate authority, as a matter of fact the reply in each case was considered. After due consideration of the reply, the recommendation was that the AOP may be pleased to approve the discharge of concerned officials as unsuitable for retention in service. Various officials considered the matter and the AOP accepted the recommendation for discharge under Rule 15(2)(g)(ii) of the Rules. Thereafter, discharge order was passed where it is categorically noted that the competent authority i.e. AOP was pleased to accord the approval of discharge of the concerned officials from service. In the discharge order it is also stated that instructions on discharge of a airman as contained in AFO 291/77, 40/89 and the letter of the Air Force Records Office dated 28.11.1991 were strictly complied with. Above being the position, the learned Single Judge and the Division Bench were wrong in holding that the reply given to the show cause notice was not considered. The factual scenario is to the contrary.

12. Above being the position, the judgments of the learned Single Judge and the Division Bench cannot be maintained and are set aside in each case.

13. So far as Civil Appeal No.2670 of 2002 is concerned there is no appearance on behalf of the appellant when the matter was called. In fact, he had filed an affidavit in response to the show cause notice and he had stated that he had no explanation to offer and that he had no clarification. That being so, learned Single Judge was not justified in allowing his writ petition. The Division Bench of the High Court was justified in allowing the Special Appeal so far as he is concerned. In his

case the order of the High Court needs no interference.

A

14. In the ultimate result, Civil Appeal No.2670 of 2002 is dismissed while the other appeals are allowed. There shall be no order as to costs.

S.K.S.

Civil Appeal Nos. 2668, 2669, 2671 and
2672 of 2002 allowed.

B

Civil Appeal No. 2670 of 2002 dismissed.