

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.977 of 2001

% Date of decision: 30.07.2008

CPL. SHAMBU DHANDEO CHOUDHRY ...PETITIONER  
*Through:* Mr. J.S. Manhas, Advocate.

*Versus*

UNION OF INDIA & ANR. ...RESPONDENTS  
*Through:* S/L J.S. Sehrawat &  
S/L S.K. Pandey.

CORAM:  
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE MOOL CHAND GARG

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|----|---|----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not?  | No |
| 3. | Whether the judgment should be reported in the Digest?                    | No |

SANJAY KISHAN KAUL, J. (Oral)

1. The petitioner is aggrieved by the order of premature discharge dated 15.9.2000 and seeks the consequent relief of reinstatement. A further relief claimed for by the petitioner is to set aside the policy letter dated 18.12.1996 as also to set aside the award of punishment of fourteen (14) days of confinement to camp awarded to the petitioner on 15.9.1999.

2. The petitioner was enrolled in the Air Force on 10.5.1994 and during the tenure of his service got various black/red ink entries as an LAC. The petitioner was issued a show cause notice dated 18.9.1999 on the ground that during his total service tenure of five (5) years four (4) months and six (6) days he has been summarily tried and punished on as many as five occasions, which included four red ink entries and one black ink entry in addition to the show cause notice. The petitioner had been warned by the Commanding Officer in writing on 22.4.1999 to desist from acts of indiscipline any further since addition of a punishment entry would result in initiating of action of discharge from service. Despite this the petitioner had again indulged in an act of indiscipline on 1.5.1999 which had resulted in the award of punishment of fourteen (14) days confinement to the camp on 15.9.1999 by the Commanding Officer. Thus, the show cause notice was issued as to why the petitioner be not discharged from service.
3. The records show that a second show cause notice was also issued on 6.3.2000 asking the petitioner to show cause as to why he should not be discharged from service and subsequently the petitioner was discharged as per impugned order.

4. We have perused the pleadings and heard learned counsels for the parties.
5. The policy decision which the petitioner seeks to rely upon is dated 18.12.1996. The policy decision relates to habitual offenders and as to the circumstances under which the airman should be discharged. On a perusal of the grounds we see no reason why the respondents can be said to be not within their rights to determine how many punishments and of which category should be imposed on an airman before he is discharged.
6. The sum and substance of the pleas of the learned counsel for the petitioner is really two fold: (i) that some of the black ink entries have been defined by the respondents as red ink entries; (ii) the petitioner could not have been imposed the last punishment on 15.9.1999 of confinement to camp, as such a punishment was contrary to the statutory provisions of the Air Force Act, 1950 (hereinafter referred to as the said Act).
7. Insofar as treating the black ink entries as red ink entries is concerned, the policy in this behalf is not in dispute, which is reproduced hereinunder:

**"1054. Sheet Roll-Red and Black Entries.**

- (a) The following entries in red ink will be made in the conduct sheet contained in the sheet roll which will be maintained for every person subject

to the Air Force Act other than a commissioned officer:-

- (i) Conviction by court – martial.
- (ii) Conviction by a civil court except when a fine was the only punishment and the commanding officer does not consider that a red ink entry should be made.
- (iii) Reduction of warrant officer or NCO to a lower rank or to the ranks, but not for inefficiency.
- (iv) Forfeiture of seniority of rank (warrant officers and NCOs).
- (v) Imprisonment.
- (vi) Detention.
- (vii) Severe Reprimand (warrant officers and NCOs).
- (viii) Field Punishment (on active service only).
- (ix) Forfeiture of good service or good conduct pay.
- (x) Forfeiture of pay and allowances except as in item (ix).
- (xi) Forfeiture of pay and allowances for absence without leave exceeding two days when classified as an offence by the commanding officer.
- (xii) Confinement to the camp exceeding seven days.

(b) Black ink entries are all punishments not included in the list of red ink entries; convictions by civil courts not meriting in the commanding officer's opinion a red ink entry; and forfeiture of pay and allowances for absence without leave not

exceeding two days when classified as an offence by the commanding officer."

*(emphasis supplied)*

8. The disputed entries are as under:

"i) AWL from 13.09.96 to 16.9.96 (02 days 23 hrs.) Awarded 07 days CC by Wg.Cdr. S.B. Sharma, CO 5 Tetra which is in accordance with the AF Act, 1950 Sec. 82 (b). It is a red ink entry as per AF Regulations 1954 para 1054 (a) xi.

ii) Overstay of leave from 04.05.98 to 25/5/98 (22 days) was awarded 03 extra duties by Wg.Cdr. C. Harikumar CO 23 Sqn. which is in accordance with the AF Act 82 (c) for the offence committed as per AF Act 1950 sec. 39 (b). For this offence, the petitioner has actually been let off very lightly. It is a red ink entry as per para 1054 (b) of Regs for AF Rules 1964.

iii) Found blameworthy of loosing AFIC for the second time within a span of one year and hence awarded 03 extra guards. It is an offence as per AF Act 1950 Sec. 54 (b) and the punishment awarded has actually been of a minor nature. It could have been dealt with more severely as per the policy letter Air HQ/C 23690/PM (S) dated 23 Sep 92."

9. It is the submission of the learned counsel for the petitioner that all the aforesaid three entries should have been black ink entries. It is further pointed out by reference to the policy decision dated 18.12.1996 that in paragraph 7 (b) it has been stated that the punishment entry in the form of a black ink entry incurred for the offence of loss of Armed Forces Identity Card for the first time by airmen is not to be counted. It is, thus,

submitted that the second loss should be treated as a black ink entry and thus the third punishment referred to aforesaid should be a black ink entry.

10. It is pointed out on behalf of the respondents by reference to para 1054 of the Regulations of Air Force 1954 (revised) quoted above that in case of forfeiture of pay and allowances for absence without leave not exceeding two days would be a black ink entry but where pay and allowances are deducted for a larger period it becomes a red ink entry as a consequence of the said provision. Deduction of pay and allowances is an automatic procedure of the respondents when there is absence without sanction. Thus, in the case of the petitioner the first punishment related to more than two (2) days leave and the second punishment was for twenty-two (22) days leave and thus rightly red ink entries were awarded.
11. In our considered view, this would be the right conclusion in view of the reading of the Regulations aforesaid.
12. Insofar as the punishment (iii) is concerned the fact that the black ink entry given for the first loss of the card is not to be counted does not imply that the second loss of card is again a black ink entry. It is the offence which is

material in the case and the second loss is a red ink entry and thus all the three entries have been correctly made.

13. The fourth punishment awarded is as under:

"iv) Due to early morning flying requirements during the summer months, the Sqn personnel were to report to the Sqn. At 0430 hrs to prepare the Aircraft and not 0700 hrs as mentioned by the petitioner. The petitioner was punished vide AF Act, 1950 Section 82 (a). It is a red ink entry as per AF Regulation 1954 para 1054 (a) vi."

14. There is no dispute that the aforesaid is a red ink entry.

15. The last punishment is as under:

"v) Charged for providing false evidence with respect to his mother's ill-health. The petitioner was punished when the information given by the petitioner was proved false by the investigation report. This is an offence under the AF Act 1950. The punishment is in accordance with AF Act 1950 Sec 82 (b) and it does not fall under the sec. 84 (4) as the individual was not a Non commissioned officer as on the date 15.9.99 when the punishment was awarded. It is a red ink entry as per Regulations of AF 1964 para 1054 (a) xii."

16. In respect of the aforesaid punishment it is the submission of the learned counsel for the petitioner that the petitioner could not have been confined to camp and thus the punishment itself is null and void. The basis for the same is stated to be the provisions of Section 82 (b) of the said Act read with the provisions of Section 84 (4) of the said Act. The same reads as under:

**"82. Punishment of persons other than officers and warrant officers.** – Subject to the provisions of section 84, a commanding officer or such other officer as is, with the consent of the

Central Government, specified by the Chief of the Air Staff, may, in the prescribed manner, proceed against a person subject to this Act otherwise than as an officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say, -

(a)....

(b) confinement to the camp up to fourteen days;"

.....

**"84. Limit of punishments under section 82.-**

(1)....

(2)....

(3)....

(4) The punishments specified in clauses (a), (b), (c), (e), (g) and (j) of section 82 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, of such rank."

17. Learned counsel, thus, submits that in case the petitioner holds the post of a Non-Commissioned Officer either when the offence was committed or when the punishment was awarded, he could not have been awarded the punishment of confinement to camp. The factual sub-stratum to support this plea is a letter dated 29.7.1999 issued by the record office including the list of personnel to be promoted. The name of the petitioner is in the list of persons to be promoted as Corporal w.e.f. 10.6.1999. It is, thus, submitted that the petitioner stood promoted from 10.6.1999.



18. On the first blush this argument did appear to have substance but then it has been pointed out on behalf of the respondents that the petitioner continued to work as an LAC till the date of punishment as the promotion order had not been given effect to. In this behalf the documents filed show that there has been some communication gap insofar as the receipt of the letter dated 29.7.1999 is concerned. Reminders were being received by the Unit about the non-grant of substantive promotion to the petitioner vide letter dated 13.8.1999, 21.8.1999 and 16.9.1999. In fact, a second copy of the letter was forwarded from the record office on 14.9.1999 to the Unit. Thus, though the petitioner was promoted, there has been some mis-communication of receipt of the relevant letter with the result that the Unit never forwarded the copy of the POR Promulgating the Re-classification in respect of the petitioner from an LAC to an Airman. The fact remains that the petitioner continued to hold the post of an LAC when he was awarded the punishment. The offence was committed on 1.5.1999 prior to the letter dated 29.7.1999 though the punishment was awarded later on 15.9.1999.

19. The Habitual Offenders Policy dated 18.12.1996 provides the criteria for determination of habitual offenders as under:

“5. Criteria Habitual Offenders. Airman or NC(E) who meets with any one of the following individual criteria is to be treated as Habitual Offender and his case is to be considered for discharge after issuing a Show Cause Notice:-

(a) Total number of punishment entries six and above (including Red and Black Ink entries).

Or

(b) Four Red Ink punishment entries.

Or

(c) Four punishment entries (Red and Black Ink entries included) for repeated commission of any one specific type of offence, such as Disobedience, Insubordination, AWL/Overstayal of Leave, Breaking Out of Camp, Offence involving alcohol, Mess Indiscipline, Theft of Service/Personal property belonging to others and use of abusive/threatening language etc.”

20. The petitioner meets the aforesaid criteria as he has been given four red ink entries as per Clause 5 (b) aforesaid.

21. There is also another aspect to the matter. The petitioner really wants us to scrutinize each entry and determine what should be the nature of punishment awarded to the petitioner making us a court of appeal for award of each summary punishment by the respondents.

The respondents are a disciplined force which in turn requires a much higher degree of adherence to discipline standards by personnel working with them. It is for this reason that even smaller aberrations in discipline are punished forthwith.

22. The petitioner has been a repeated offender and was given sufficient opportunity to redeem himself. When the number of entries were reaching the benchmark for action against the petitioner the Commanding Officer had counseled the petitioner by writing to him on 23.4.1999. Despite this the offence was committed on 1.5.1999 and that too of false evidence about his mother's illness. It is thereafter that the show cause notices have been issued and action of discharge taken against the petitioner.
23. We see no reason to interfere under Article 226 of the Constitution of India.
24. Dismissed.

SANJAY KISHAN KAUL, J.

JULY 30, 2008  
*b'nesh*

MOOL CHAND GARG, J.