

CASE NO.:
Appeal (civil) 402-403 of 2004

PETITIONER:
Union of India & Ors

RESPONDENT:
Flight Cadet Ashish Rai

DATE OF JUDGMENT: 18/01/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Union of India and its functionaries calls in question legality of the judgment rendered by a Division Bench of the Allahabad High Court holding that the learned Single Judge was right in quashing the orders dated 16.6.2000 and 27.6.2000, and further directing appellants to allow the respondent to complete training from the stage he had left and to act in terms of the instructions of the Headquarters, Indian Air Force as regards re-testing.

Factual background in a nutshell as highlighted by the appellants is as follows:-

The respondent was selected as a Flight Cadet to undergo training to become a pilot in the Indian Air Force (in short 'Air Force'). The concerned course for being commissioned as pilot officer was course no. 157 which covered a period of 72 weeks. It commenced on 5.2.1995. During training the respondent complained of knee injury which was sustained prior to training on 28.12.1994 due to a road accident. Since he remained absent during the course, it was felt that he could not be continued in the pilot course, flying training was terminated and he was given option of joining Ab-initio Navigator's course which the respondent accepted and joined in January 1998. The course was 86 Ab-initio Navigator's course. In November 1998, he was found to be lagging behind in the studies and the training was terminated. Further option was given to join Ground Duty Officer's course which the respondent opted to join and, in fact, in July 1999 joined as a trainee in the Administrative branch which was to be held at Air Force Academy in Ground Duty Officer's Course No. 106. During such training the authorities came to know various acts of misconduct on the part of the respondent. A Court of Inquiry was conducted where the respondent admitted the aberrations. A warning was given in November 1999. As he failed in three academic subjects, a Training Review Board was formed and its opinion was forwarded to the Headquarter for processing with the Central Government. He was suspended from training on 1.2.2000 which in Air Force terminology is called "Struck Off Ration Strength". He was "routed home" pending final approval. Respondent filed a writ petition on 1.2.2000 before the Allahabad High Court challenging suspension of training where interim order was passed allowing the respondent to continue training. The respondent was directed to resume duty on 11.3.2000 whereas he actually reported for duty on 13.3.2000. On

11.3.2000 he was again involved in drunken brawl outside the Academy and was arrested and sent to police custody. On 22.3.2000 the case was compounded by a Magistrate. On 2.4.2000 the Duty Officer of the Air Force Academy visited the trainees' mess and found the respondent smelling of liquor. On 12/13.5.2000 the respondent in a drunken condition physically assaulted co-trainees, used abusive language and terrorized a large number of trainees by his violent behavior. On 12.6.2000 he was involved in another criminal case in having misused credit card of the other Cadets. First information report was lodged, cognizance was taken and warrants were issued. Since he failed in final examination he was assessed to be unsuitable for further training by the Review Board on 29.5.2000 and on 14.6.2000 his training was terminated because of his failure in academics and for maintaining low standard of discipline. The report was forwarded to the Air Force Headquarters, he was "routed home" and order of termination of Cadetship was passed.

Another writ petition was filed before the High Court challenging termination of training. Both the writ petitions were heard together and by order dated 25.5.2001 the learned Single Judge allowed both the writ petitions and quashed the orders dated 16.6.2000 and 27.6.2000. Writ appeals filed by the present appellants were dismissed with the directions as afore-noted. Learned Single Judge has directed that the respondent be commissioned. By order dated 16.1.2003 the judgment was stayed.

Learned Counsel for the appellants submitted that the High Court has not noticed the relevant instructions and has erroneously held that the procedure adopted by the authorities was not proper. The learned Single Judge held that the respondent like other co-examinees was entitled to grace marks. It was further noted by the learned Single Judge and the Division Bench that the benefit was not given to the appellant. It was pointed out that there was no malafide involved. There is no question of any design to deny benefits as observed by learned Single Judge. In fact, with a view not to jeopardize the career of a cadet various options were given and, he was given different options at different point of time taking into account his physical health.

Learned counsel for the respondent submitted that High Court has taken note of legitimate expectations. The state of mind of a young person with high hopes for serving the country has been duly considered. There was no inquiry conducted regarding various allegations and, in fact, after the first instance of so-called blemish the authorities had condoned the lapses and had closed the matter.

There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner:

(i) Illegality: This means the decision-maker must

understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

In the instant case the High Court seems to have ignored the relevant aspects and emphasized on irrelevant issues. There were Review Boards on three occasions at Air Force academy where the relevant factors regarding the academic performance of the respondent as well as the disciplinary cases were considered and termination of training was recommended. The training termination proceedings were forwarded to the Air Headquarters as well as the Government of India which duly approved the same. That itself shows that there was no mala-fides involved.

The learned Single Judge has clearly erred in holding that the authorities were showing repugnance to the order of the High Court and there was design to deny the commissioning to the respondent as he had challenged authorities of the Air Force. This conclusion is clearly without any supportable material. The power of punishment is contained in paragraph 3 of order no.46/98 dated 13.3.1998 which deals with disciplinary proceedings of the Cadet. The extent of exercise of power by various authorities is delineated in these instructions.

Air Force Order (AFO) No.79/73 issued by the Chief of the Air Force Staff prescribes the procedure to deal with the Cadets found/assessed unsuitable. Some of the relevant paras need to be noted.

Paras 11, 12 and 15 of the AFO provide that a Cadet can be unsuitable at any of the grounds namely, Indiscipline, Medically Unfit or Lack of Officer Like Quality.

Para 18(a) further that failure in Final Exams is also a ground for holding the cadet unsuitable and the training of an unsuitable. Cadet can be suspended or terminated.

Para 19 of the AFO provides that before passing an adverse order every time a Training Review Board consisting of four members shall be constituted and the TRB will give opportunity to the Cadet, will record statements and will propose an action to be taken against the Cadet.

Para 22 of the AFO provides that the Training Review Board (TRB) will also examine the past conduct, reasonable likelihood to achieve required standards and Basic Officer like qualities before making its recommendations.

Training Command Air Staff Instructions (in short TCASI) deals with the procedure to be followed for periodic assessment.

Para 11 of the TCASI Provides that the assessment shall be made on the basis of marks of the Examination and on the basis of assessing the Officer like Qualities (OLQ) in the cadet. The cadet is required to pass such and every paper with minimum 50% marks, and any lesser marks shall be assessed as 'Failed'.

Para 16 provides that failed Cadets shall be treated in

accordance with procedure provided in AFO 79 of 1973 as amended by AFO 24 of 1976 dated 8.5.1976.

As is clearly evident from above, training of failed cadets can be terminated. The learned Single Judge referred to the instruction as quoted above. In instruction AFO 79/73 as amended it is provided inter alia as follows:-

"12 Term "termination of training" means the final elimination of a trainee from the training which he is undergoing, whether or not he is thereafter allowed to be trained for the duties of some other branch of Service."

The question of allotment of grace marks is also governed by the instructions and clearly the respondent was not entitled to grace marks. The warning letters issued to the respondent show that he had failed to secure the requisite pass percentage and he was advised guidance and additional coaching. In the final examinations he had failed in two various subjects. In the confidential recommendation of the latter Training Review Board dated 29.5.2000 various acts of misconduct were noticed and that is why it was recommended that his training be terminated. Though the learned counsel for the respondents submitted that the respondent was not given adequate opportunity to defend him, from the copies of the proceedings which were filed, we find the plea to be without substance. Opportunity for cross-examination while making submissions affirmative statements was given. Several Training Review Boards were held to look into the questions of indiscipline and the failure in academics. This amply proves that adequate opportunity was granted to the respondent to explain his position. The High Court did not keep in view the principles governing judicial review and acted on surmises and conjectures, and quashed the orders passed by the authorities.

The judgment of the Division Bench affirming that of the learned Single Judge is clearly unsustainable and is quashed.

Appeal is allowed but in the circumstances without any order as to costs.