

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
CORPORAL A.K. BAKSHI & ANR.

DATE OF JUDGMENT: 23/02/1996

BENCH:
AGRAWAL, S.C. (J)
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AGRAWAL, S.C. (J)
NANAVATI G.T. (J)

CITATION:
1996 AIR 1368 1996 SCC (3) 65
JT 1996 (3) 310 1996 SCALE (2)394

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.C. AGRAWAL, J. :

The question which falls for consideration in these appeals is whether an order for discharge from the Indian Air Force in accordance with the procedure laid down in the Policy for Discharge of Habitual Offenders under Rule 15(2)(g)(ii) of the Air Force Rules, 1969, as prescribed in the Policy Directive dated August 14, 1984, [hereinafter referred to as 'the Policy for Discharge'] amounts to removal by way of punishment falling under Rule 18 of the Air Force Rules, 1969 (hereinafter referred to as 'the Rules').

The Air Force Act, 1950 (hereinafter referred to as 'the Act'), in Chapter IV, makes provisions for conditions of service of every person subject to the Act. Section 18 prescribes that every person subject to the Act shall hold office during the pleasure of the President. Section 19 empowers the Central Government to dismiss or remove from service any person subject to the Act. The said power is subject to the provisions of the Act and the rules and regulations made thereunder. Section 20 deals with the power of the Chief of the Air Staff and other officers in the matter of dismissal, removal or reduction of persons subject to the Act. Section 22 lays down that any person subject to the Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed. Sub-section (1) of Section 189 confers on the Central Government the power to make rules for the purpose of carrying into effect the provisions of the Act. Clause (a) of sub-section (2) of Section 189 authorises the making of rules to provide for the removal, retirement, release or discharge from the service of persons subject to the Act. In exercise of the power conferred by Section 189 the Central Government has framed the Rules. Rule 15 specifies the authorities who are competent to authorise discharge from

service of persons subject to the Act for the specified causes and also the manner in which the said power is to be exercised. Rule 15 reads as under :

"15. Authorities empowered to authorise discharge.-

(1) Each of the authorities specified in column 3 of the Table below shall be the authority competent in respect of persons subject to the Act specified in column 1 thereof for the causes specified in column 2 and in the manner specified in column 4, to discharge such persons from the service.

(2) Any power conferred by this rule on any of the aforesaid authorities may also be exercised by any other authority superior to it.

TABLE

Class	Cause of discharge	Competent authority to authorise					Special Instructions		
Persons enrolled under the Act who have been arrested.	(a)	x	x	x	x	x	x	x	x
	(b)	x	x	x	x	x	x	x	x
	(c)	x	x	x	x	x	x	x	x
	(d)	x	x	x	x	x	x	x	x
	(e)	x	x	x	x	x	x	x	x
	(f)	x	x	x	x	x	x	x	x
	(g)	His services no longer required.-							
	(i)	x	x	x	x	x	x	x	x
	(ii)	Unsuitable for retention the Air Force. Air Officer i/c Administration							

Rule 16 deals with dismissal or removal of officers for misconduct and prescribes the procedure to be followed in that regard. Rule 17 deals with removal from service of officer on grounds that he is unfit to be retained in service due to inefficiency, physical disability or other ground other than misconduct. Rule 18 deals with dismissal or removal of a person subject to the Act other than an officer.

A project study on 'absence without leave' (AWL) of airmen covering the period 1978 to 1983 made by the Institute of Defence Management brought out the following salient features regarding the existence of habitual offenders among airmen :

"(a) There is a specific hard core hard core group of airmen in the Air Force (about 1288 in number from all trades) who have been contributing regularly and predominantly to the annual offence statistics in the Air Force year after year. Further breakdown of

the group based on the number of punishments and the corresponding number of airmen in each of these sub-groups in as under :-

Groups based on punishments on record	No. of Airmen	Progressive Total
11 and above	17	17
10	7	17
9	11	35
8	22	57
7	56	113
6	80	193
5	145	338
4	339	677
3	611	1288

(b) This group of airmen has not been repeating AWL offences, but also other offences and

(c) This group of airmen have been a strong source of adverse influence on the general discipline of other airmen in the service.

Adverse Effects :

3. The main adverse effect flowing out of the repetitive indiscipline perpetrated by this group of habitual offenders were :

(a) Serious adverse effect on the general morale and discipline, especially on the young airmen joining various Units from the training centers.

(b) Unit level administration is kept pre-occupied with these chronic indiscipline cases impinging on time which is otherwise required for constructive activity.

(c) Very often, at some stage or the other, airmen from this group are found to commit serious offences not only within but also outside the Air Force, thereby tarnishing the image of the service.

(d) Invariably many of these airmen are not performing well in their trades also. Hence their overall contribution to the service is negligible.

(e) Some of the airmen of this group have been promoted and have attained the ranks of SNCOs (Sgts, and above). Such SNCOs are a very poor example to others particularly the younger airmen."

Having regard to the existence of habitual offenders among the airmen and the adverse effects of their repetitive indiscipline of habitual offenders among the airmen on the general discipline and administration of the Indian Air Force, the Air Headquarters decided to Say down the Policy

for Discharge prescribing the guidelines to deal firmly with such habitual offenders. In paragraph 4 of the said policy it was prescribed :

"Airmen who meet any one of the following individual criteria are to be treated as habitual offenders and considered for discharge under Rule 15 (2)(g)(ii) of Air Force Rules, 1969 :-

(a) Total number of punishment entries six and above (including Red and Black ink entries);

(b) Four Red ink punishment entries;

(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, breaking out of camp, offences involving alcohol, mess indiscipline, use of abusive/threatening language, etc."

The detailed actions and procedures which are required to be followed to implement the Policy for Discharge are given in the Appendix to the policy (hereinafter referred to as 'the Procedure for Discharge'). By paragraph 3 of the Procedure for Discharge habitual offenders who may not be found suitable for retention in service are initially placed in two categories, viz., (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. Under paragraph 7 Units/Stations are required to order Boards of Officers to scrutinize the service documents (conduct sheets) of all airmen with a view to identify and list out the habitual offenders and potential habitual offenders as per the criteria laid down in paragraph 4 (a), (b) and (c) of the policy guidelines. Copies of the proceedings of the Board of Officers are required to be forwarded to the Command Headquarters and Air Force Records. Under paragraph 9 airmen of both categories are to be warned in writing by the Commanding Officer personally about the implication of their persisting in acts of indiscipline and they are to be informed that firstly, they are getting another opportunity to mend themselves and an addition of another punishment entry (either Red or Black) in their record will result in their discharge. Under paragraph 11 conduct sheet of the airman is required to be reviewed by the Adjutant of the unit concerned every time an airman put on charge is found guilty and punished to ascertain whether the offender falls in any of the categories and, if so, to initiate appropriate action where necessary. Under paragraph 13 it is required that whenever an airman of the above two categories is awarded another punishment, his case is to be immediately reported by the Unit to the Command concerned. In paragraph 14 it is provided that all cases of the two categories, i.e., those who have already crossed the criteria laid down for qualifying as habitual offenders and those on the threshold of doing the same, reported to Command Headquarters either by the initial Board of Officers or individually, are to be monitored by the Command Headquarters and on receipt of intimation regarding award of another punishment in such cases the Command Headquarters are to issue show cause notice to the individual. By paragraph 15 it is required

that all case of airmen who have been served with show cause notices are to be individually forwarded with all the relevant replies/details/documents/recommendations to Directorates of PS and PA at AIR Headquarter at the earliest. Paragraph 16 makes provision for scrutinizing of the cases by the Directorate of PS and for forwarding the same to the Directorate of PA with their recommendations. Under paragraph 17, the Directorate of PA has to submit the cases to Air Officer Incharge Personnel for his approval and then to intimate follow up action with Air Force Records Officer.

Both the respondents, namely, Corporal A.K. Bakshi and Corporal Sobhanan, had been punished for six offences and in accordance with the Procedure for Discharge show cause notices were issued to them by the Group Captain of Headquarters Training Command, IAF, Bangalore, acting for Air Officer Commanding-in-Chief, requiring them to whom cause as to why for the said acts of indiscipline they should not be discharged from service under Rule 15(2)(g)(ii) of the Rules for having become a habitual offender liable for discharge. They submitted their replies to the show cause notice. After considering the said replies, recommendation for discharge was made and the said recommendation was accepted by the Air Officer-in-charge Personnel and thereafter the orders for their discharge were issued. Feeling aggrieved by the said orders of discharge, the respondents filed writ petitions (C.W.P.Nos. 12320 of 1990 and 5850 of 1990) in the High Court of Karnataka. Both the writ petitions were dismissed by the learned single Judge by judgment dated January 3, 1992. The said respondents filed writ appeals (W.A. Nos.141 of 1992 and 152 of 1992) against the said decision of the learned single Judge. The said appeals have been allowed by the Division Bench of the High Court by the impugned judgment dated March 4, 1992. The High Court has rejected the contention urged on behalf of the respondents that the Policy for Discharge is liable to be struck down for the reason that it permits the counting of offences for which the airmen were convicted and punished prior to August 1984. The High Court has, however, held that termination of the services of persons subject to the Act could be by way of punishment for causes involving their misconduct or may be for causes not involving their misconduct, i.e., not by way of punishment. Rule 15(2)(g)(ii) makes provision for termination of services for causes not involving any misconduct and Rule 18 provides for termination by way of punishment for misconduct. It was held that discharge under the Policy for Discharge amounts to termination of the services of the airman for misconduct which led to his conviction and award of punishment under the Act falling under Rule 18 of the Rules and is not mere discharge simpliciter envisaged under Rule 15(2)(g)(ii) of the Rules. The High Court has also found that show cause notice was issued to the respondents by the Group Captain at the Command Headquarters and not by the air Officer-in-charge who is empowered to dismiss on account of misconduct which led to his conviction under Rule 18 of the Rules.

The question which thus arises for consideration in these appeals is whether an order of discharge passed in pursuance of the Policy for Discharge cannot be regarded as discharge under Rule 15(2)(g)(ii) and has to be treated as termination of the service for misconduct falling under Rule 18. We have already set out Rule 15(2)(g)(ii). We may now take note of Rule 18 which provides as under :

"18. Dismissal or removal of a person subject to the Act other

than an officer.- Save in a case where a person subject to the Act other than an officer is dismissed or removed from the service on the ground of conduct which had led to his conviction by a criminal court or a court martial, no such person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20 unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.

(2) Notwithstanding anything contained in sub-rule (1), if in the opinion of the officer competent to order the dismissal or removal of such person, it is not expedient or reasonably practicable to comply with the provisions of sub-rule (1), he may after certifying to that effect, order the dismissal or removal.

(3) All cases of dismissal or removal without complying with the procedure prescribed in sub-rule (1) shall, without delay, be reported to the Central Government."

A perusal of the said Rule indicates that it deals with persons other than officers subject to the Act. Sub-rule (1) provides that no such person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20 unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service. This requirement is dispensed with in cases where a person is dismissed or removed from service on ground of conduct which has led to his conviction by a criminal court or court martial. In other words, except in cases where the dismissal or removal from service is on the ground of conduct which has led to his conviction by a criminal court or court martial, if a person subject to the Act is dismissed or removed from the service he must be informed about the particulars of the cause of action against him and must be afforded an opportunity to make his submissions against the proposed dismissal or removal. Sub-rule (2) dispenses with the requirement of issuing notice in cases where an officer competent to order the dismissal or removal is of the opinion that it is not expedient or reasonably practicable to comply with the provisions of sub-rule (1) and in such cases he may after certifying to that effect order the dismissal or removal. Sub-rule (3) lays down that all cases of dismissal or removal without complying with the provisions of sub-rule (1) must be reported to the Central Government without delay.

According to the High Court, the provisions of Rule 18 are attracted in cases where a person is discharged on the basis of the Policy for Discharge for the reason that the action for discharge has been taken on the basis of six

punishments which have been imposed on him. We find it difficult to endorse this view of the High Court. The punishments referred to in the Policy for Discharge are punishments that have been imposed for misconduct under the relevant provisions of the Act and the Rules. The Policy for Discharge envisages that in cases where an airman has been awarded such punishments six times, he is to be treated as a habitual offender and action for his discharge from service should be taken against him under Rule 15(2)(g)(ii) of the Rules. This action for discharge is not by way of punishment for the misconducts for which he has already been punished. The basic idea underlying the Policy for Discharge is that recurring nature of punishments for misconduct imposed on an airman renders him unsuitable for further retention in the Air Force. Suitability for retention in the Air Force has to be determined on the basis of record of service. The punishments that have been imposed earlier being part of the record of service have to be taken into consideration for the purpose of deciding whether such person is suitable for retention in the Air Force. The discharge in such circumstances is, therefore, discharge falling under Rule 15(2)(g)(ii) and it cannot be held to be termination of service by way of punishment for misconduct falling under Rule 18 of the Rules. We are, therefore, unable to agree with the High Court that termination of services on the basis of the Policy for Discharge does not constitute discharge under Rule 15(2)(g)(ii) but amounts to removal for misconduct under Rule 18 of the Rules.

It is not disputed that in both these cases the procedure prescribed under the Policy for Discharge has been followed. The orders for discharge of the respondents thus do not suffer from any infirmity and the Division Bench of the High Court was in error in setting aside the said orders.

The appeals are, therefore, allowed, the judgment of the Division Bench of the High Court dated March 4, 1992 in W.A. Nos. 141 of 1992 and 152 of 1992 is set aside and the judgment of the learned single Judge dated January 3, 1992 dismissing the writ petitions filed by the respondents is restored. No order as to costs.