

Date of Decision : 8th October, 2010

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OM PRAKASH RAI & ORS Petitioner
Through : Col. S.R. Kalkal, Adv.

versus

UNION OF INDIA AND ORS. Respondents
Through : Ms. Barkha Babbar, Adv.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

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

GITA MITTAL, J. (Oral)**W.P.(C)No.6071/2010 & CM No.11969/2010**

- By way of this writ petition, the petitioner has assailed the order dated 12th August, 2010 passed by the respondents withdrawing the petitioners from the Orientation Course conducted at College of Military Engineering, Pune on the ground that they were found using unfair means in the examination.
- The facts giving rise to the instant petition are within a narrow and undisputed compass.

3. A diploma course in Civil Engineering of two years is conducted by College of Military Engineering, Kirkee, Pune which is affiliated to the Indira Gandhi National Open University ('IGNOU' hereafter) at Delhi. This diploma course is confined to personnel of the engineering regiment.

4. On the 7th of March, 2008, a Board of Officers has scrutinized applications for detailment of candidates for conducting a pre-diploma course of April, 2008 which was to be conducted at the Headquarters of the Bombay Engineering Group and Centre, Kirkee, Pune. The petitioners were selected for pursuing the pre-diploma course which was to commence with effect from 9th April, 2008. An entrance examination was also conducted by IGNOU and between 5th and 6th June, 2008. Screening Board for final selection of the candidates for this course was conducted which submitted its report on the 12th of June, 2008 to the Engineer-in Chief branch. The selected list of candidates was released on 18th June, 2008 and the course commenced with effect from July, 2008 at the training centre. The respondents have pointed out that the petitioners were selected for Diploma in Civil Engineering on self-finance basis.

5. It has been pointed out that the examination for the first semester of the Diploma in Civil Engineering was conducted from 1st to 31st December, 2008. The petitioner's were found using unfair means in the examination on 11th December, 2008, by the Presiding Officer who reported the matter to the

Superintendent of Training at the Headquarters of the Bombay Engineering Group and Centre, Kirkee, Pune.

6. In this background, disciplinary action in terms of the Special Army Order 8/S/77 was commenced against the petitioners. The summary trial proceedings have been placed on record before us.

7. Our attention has been drawn to the applicable instructions so far as candidates who are found using unfair means are concerned. The respondents have placed relevant extract of the Standing Special Army Order 8/S/77 which admittedly binds the consideration. Para 16 of these instructions is relevant which provides that a student found using unfair means in the examination held by the training establishment would be withdrawn from the course and disciplinary proceedings will be instituted against him by the training establishment.

8. The respondents have pointed out that a lenient view was taken so far as the petitioners were concerned so far as their service report was concerned. Pursuant to summary trials conducted against the petitioners on the 30th of January, 2009, the Commanding Officer of the Training Battalion awarded only the punishment of Severe Reprimand i.e. a red ink entry in the service book of the petitioners for the offence committed by them under Section 63 of the Army Act, 1950.

9. The respondents have also drawn our attention to further instructions issued by the Army Headquarters bearing No.28409/Dip Course/E(Trg) dated 22nd June, 2005 which provides as follows:-

“2. The matter of disciplinary action to be taken against Diploma Course candidates who are caught using unfair means during Diploma course exams etc. has been under consideration at this HQ. After examining the issue, it has been decided that:-

- (a) Disciplinary action against candidates caught using unfair means during Diploma Course exams such as cheating, copying etc. shall be taken by the Trg Center in terms of Para 16 of SAO 8/S/77.
- (b) Prior approval of this HQ be taken before withdrawing a candidate from Dip Course as per para 18 of SAO 8/S/77.
- (c) An undertaking be taken from all candidates as per specimen attached, that in case a candidate is found using unfair means during Dip Course, he is liable to be withdrawn from Diploma Course. In the event of withdrawal of a candidate from Dip Course on account of using unfair means in exams/or on medical grounds/or any other disciplinary grounds, he shall not be entitled for refund of Dip Course fee already paid by him. The aforesaid undertaking will given by all existing and future Dip Course candidates.”

10. It has been pointed out that the information with regard to the award of punishment to the petitioners was forwarded to the Army Headquarters by a communication dated 10th February, 2009 and prior approval for withdrawal of the petitioners from the course in accordance with para 2 (b) of the letter dated 22nd June, 2005 was sought.

11. Vide letter dated 4th March, 2009, approval for withdrawal of the candidates from the diploma course was also granted by the Army Headquarters.

12. It appears that the petitioners thereafter submitted representations in respect of their withdrawal from the course to the various authorities including Army Wives Welfare Association and the Defence Ministry. These communications were forwarded to the concerned authorities. On a re-consideration of the matter and having regard to the fact that the petitioner were attending a self-finance course wherein they had incurred expenses, the respondents took a benevolent view and reviewed the decision so far as the withdrawal of the petitioners from the course was concerned. The wives of the petitioners were informed by letters dated 22nd June, 2009 of the review of the decision to this extent.

13. We find that Section 63 of the Army Act, 1950 under which the petitioners were charged and convicted deals with offence of violation of good order and discipline. There is no challenge to the conviction order/punishment which was awarded to the petitioners in the summary trial. Despite their having been found using unfair means the petitioners were permitted to continue with the diploma course. The respondents would be awarded appropriate certification by a university concerned on completion of the diploma course.

14. The respondents have pointed out before us that the orientation course from which the petitioners have been withdrawn is intended solely for such candidates who are detailed to be absorbed in the Military Engineering Services as Junior Engineers. Ms. Barkha Babbar, learned counsel appearing for the respondents, has pointed out that the petitioners stood punished for using unfair means. The duties which a person serving with the Military Engineering Services has to perform, entails considerable financial transactions.

In this background, the respondents have taken a considered view not to depute the petitioners in view of their conduct for which they stand punished.

15. It is submitted by Col. S.R. Kalkal, learned counsel for the petitioners, that the petitioners deserve to be permitted to complete the orientation course for the reason that the same would enable them to get registered with civil authorities after their retirement.

16. The respondents have taken a considered view based on discretion conferred upon them. It is not the petitioner's case that they have any legal right to pursue the orientation course for which serving military personnel are detailed having regard to various essential qualities.

17. The prayer for completion of the orientation course is pressed on a punishment which was awarded to another person who was found using unfair means in the examination

for the diploma course. It needs no elaboration that a plea of discrimination can be premised only on a legal right and entitlement to the claim. The respondents have taken into consideration the conduct of these persons and awarded disciplinary punishments based on the nature of their culpability.

18. So far as the contention that other candidates found using unfair means in the year 2005 being differentially treated is also of no assistance to these petitioners. The respondents have pointed out that a considered view was taken by the respondents as per the extant policy. On re-consideration of the matter, the respondents have already exercised discretion in favour of the petitioners and taken a lenient view in permitting them to complete the diploma course. The respondents could have very well stood by their decision for not permitting the petitioners to complete the course. Even otherwise the respondents are empowered and justified in taking a different view in respect of the conduct of persons found using unfair means.

19. No illegality or procedural infirmity in the order which has been passed has been urged or pointed out.

20. In view of the above discussion, we find substance in the explanation given by the respondents in passing the impugned order and find no merit in the prayer made by the writ petitioners.

This writ petition and application are accordingly dismissed.

GITA MITTAL, J

OCTOBER 8, 2010
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J.R. MIDHA, J