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

+ **W.P.(C) 12025/2016**

VIVEK RUHIL

..... Petitioner

Through: Mr. Ajit Kakkar, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Barkha Babbar, Advocate for R1.
Lt. Vinayak S. Desai, Divisional
Officer 'Q' Sqn., NDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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13.11.2019

1. The Petitioner challenges an order dated 4th November, 2016 issued by the Adjutant at the National Defence Academy ('NDA'), Khadakwasla, Pune recommending the withdrawal of the Petitioner from the NDA on disciplinary grounds with immediate effect.

2. Initially, when the petition was listed on 21st December, 2016, this Court, while adjourning the case to 11th January 2017 to enable counsel for the Respondents to take instructions, directed that status quo with regard to training/service of the Petitioner be maintained till 15th January 2017 or until further orders, whichever be earlier. All questions, including that of the maintainability of the petition, were kept open.

3. The status quo order continued till 23rd May, 2017 and not thereafter.

4. Today, Ms. Barkha Babbar, learned counsel appearing for the Respondents, informs the Court that since the Movement Order was already effective on 4th November, 2016, though status quo was ordered to be maintained on 21st December, 2016, the Petitioner had left NDA by then and did not rejoin.

5. In the counter-affidavit filed on behalf of the Respondents, it is stated in Paragraph 2 that the Petitioner got relegated twice on disciplinary grounds. The first relegation was from being a fourth termmer to a third termmer. Till May, 2015, the Petitioner had been part of the 'Oscar Squadron'. He got relegated on 8th May, 2015 to the 'Hunter Squadron' on disciplinary grounds for moral turpitude, i.e. stealing. He was also placed on the Withdrawal Warning List ('WWL').

6. Again, for the second time he was relegated from being a fifth termmer to a fourth termmer for the following offences:

“(i) In possession of unauthorised mobile phone.

(ii) Viewing of pornographic material.

(iii) Posting of comments/blogging this includes posting photographs, videos taken at NDA.

(iv) Misusing the mobile phone to make calls, send, receive lewd messages etc.

(v) Wilfully damaging government property.”

7. Apart from the above, Paragraph 2 lists out an attempt made by the Petitioner to commit suicide on 3rd March, 2016 after he was punished for the aforementioned offences by cutting his wrist with a knife in the Hunter Squadron premises.

8. In Paragraph 2 (d) of the counter-affidavit, the relegatory punishments and major punishments awarded to the Petitioner have been listed out. In the third term, he was awarded 21 restrictions for being in possession of a mobile phone. In the fourth term, he was awarded 28 restrictions for being in possession of a forbidden item i.e. cigarettes. In the fourth term, he was awarded 6 restrictions for an improper cabin cupboard. In the fourth term, he was awarded 5 restrictions for disobedience of orders and being absent from the cross country practice held on 12th August, 2015. He was absent from the equitation class on 28th August, 2015 and was awarded 7 restrictions. He was again absent from classes and misled the Squadron Office on 21st September, 2015 and was awarded 14 restrictions.

9. It is stated that after relegation the Petitioner was transferred to the ‘Q’ Squadron. He was also counselled by the Battalion Commander, Squadron Commander and Divisional Officer for improving his health and discipline. On 30th June, 2016, on arrival from the term break, he was counselled by the Squadron Commander.

10. As far as the immediate trigger for the impugned order is concerned, it is

stated that the Petitioner was suspected to be involved in a case of stealing when on 3rd September, 2016 he is alleged to have illegally taken possession of a pouch of another cadet which contained the said cadet's Identity Card, Liberty Card, Canteen Smart Card and Rs. 300/-. He is also alleged to have lied to the Squadron Commander of the 'Q' Squadron and the Divisional Officer with respect to the stealing offence. He submitted false statements regarding the offence. Even at the Court of Enquiry proceedings, he is alleged to have repeatedly lied about the stealing offence and made false statements on 18th and 25th September, 2016.

11. Learned counsel for the Petitioner sought to invite the Court into examining the merits of the above allegations, and whether the Court of Inquiry was justified in its conclusions. The scope of the present petition does not permit the Court to enter into such an enquiry. In examining whether the Respondents were justified in the impugned action of directing the withdrawal of the Petitioner from the NDA, the Court is satisfied from what has been stated in the counter-affidavit that there were sufficient grounds for such an action. It does appear that the Petitioner was given a long rope and an opportunity to mend his ways. Clearly, the Petitioner did not avail of such opportunity.

12. Considering that the Petitioner is seeking to continue as a cadet in NDA, the conduct pointed out by the Respondents in their counter-affidavit cannot be condoned. Learned counsel for the Petitioner urged that the Petitioner was only 17 years old at the relevant time and, therefore, some indiscretions on his part should not be viewed so seriously as to altogether remove him

from the NDA. The Court is unable to agree. The profile of the Petitioner shows that not only his father but even his elder brother serve the Army. The Petitioner himself studied in an Army Public School. The Petitioner, therefore, cannot plead ignorance about the standard of discipline expected to be maintained in the defence forces. The kind of behaviour displayed by the Petitioner even at the stage of training at the NDA cannot be excused even for a 17 years old.

13. The Court is not persuaded that the impugned order suffers from any legal infirmity warranting interference. The petition is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 13, 2019

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