



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

234

CWP-18691 of 2021
Date of Decision: 12.05.2025

ROHIT KUMAR

... Petitioner

VERSUS

UNION OF INDIA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. N.K. Kohli, Advocate for the petitioner.

Mr. Karan Kumar Jund, Sr. Panel Counsel
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

The petitioner has instituted the present writ petition challenging the order dated 30.04.2021 (Annexure P-1), issued by Respondent No.1 – the Commandant, National Defence Academy (NDA), Khadakwasla, Pune, whereby the petitioner was withdrawn from the National Defence Academy on disciplinary grounds.

Learned counsel for the petitioner submits that the petitioner belongs to a family with a legacy of service in the Armed Forces, being the second-generation serviceman. His father retired from the rank of Havildar and was conferred the honorary rank of Naib Subedar at the time of retirement. The petitioner qualified for and was selected in NDA Course No. 140, scheduled to commence in July 2018. He joined the Academy as an Army Cadet on 09.07.2018 and is stated to have undergone training with utmost dedication, diligence, and enthusiasm.

It is contended that the petitioner was an exemplary cadet and, in recognition of his leadership and merit, was appointed as the Divisional Cadet Captain, a position of responsibility which, according to learned counsel, may have led to resentment among certain junior cadets. As Divisional Cadet Captain, the petitioner was tasked with maintaining discipline and ensuring compliance with Academy regulations during non-training hours—duties that, by their nature, might have earned him unpopularity among some of his peers.

Learned counsel further submits that on 18.02.2021, one cadet from the Third Term absented himself from the Club Parade. Upon being apprised of the absence, the petitioner directed his term mates to instruct the said cadet to report to him after the conclusion of the parade. However, the absentee cadet appeared only later that evening. When questioned regarding the delay and not satisfied with the response, the petitioner is stated to have imposed a minor penalty upon him. It is contended that the sequence of events, as narrated in detail in the writ petition, indicates that the petitioner became the victim of certain frivolous and malicious complaints arising from this incident.

Despite being at the threshold of completing his final term of training on 30.04.2021, the petitioner was, on 29.04.2021, informed orally that he was to be marched before the Commandant. Upon presentation, he was informed that he had been awarded the punishment of withdrawal from the course on disciplinary grounds. The formal movement orders, dated 30.04.2021, were thereafter issued to him, conveying that the petitioner stood withdrawn from the Academy with effect from 29.04.2021 on account of disciplinary reasons.

Learned counsel for the petitioner further contends that the impugned order of withdrawal stands vitiated for having been passed in utter disregard of the

principles of natural justice and in violation of the petitioner's fundamental right to a fair hearing. It is urged that the petitioner was condemned unheard, and the punitive action taken against him is manifestly arbitrary, illegal, and liable to be set aside on the following grounds:-

- (i) That no charge sheet or statement of allegations was ever served upon the petitioner detailing the specific allegations levelled against him;
- (ii) That no show cause notice was issued to the petitioner affording him an opportunity to respond to or explain his defence against the charges;
- (iii) That the petitioner was not supplied with the copy of evidence or statement forming the basis of the alleged misconduct;
- (iv) That no opportunity was given to the petitioner to seek assistance or representation by a counsel of his choice to defend himself against the imposition of such a grave and career-altering penalty;
- (v) That no proper or fair inquiry was conducted into the alleged misconduct, and the entire material and evidence relied upon was collected and considered behind the petitioner's back;
- (vi) That no reasoned or speaking order was passed by the disciplinary authority delineating the evidence relied upon, the findings arrived at, or the justification for imposing the extreme penalty of withdrawal from the course.

It is thus contended that the entire disciplinary action culminating in the petitioner's withdrawal suffers from procedural impropriety, denial of a fair hearing, and arbitrariness, thereby warranting judicial interference.

Learned counsel further submits that the petitioner, in exercise of his right under the Right to Information Act, 2005, sought information from the

respondents regarding the Academy Standing Orders and any other orders, regulations, or policies governing the discipline of cadets, particularly those prescribing the procedure for conducting inquiries and initiating disciplinary action. He also sought specific information concerning the orders or policies delineating the procedure for withdrawal of a cadet from the course on disciplinary grounds, if such exist, as well as copy of the proceedings under the Court of Inquiry, including statements of witnesses, the show cause notice, and related documents.

It is contended that, in response to the petitioner s RTI application, the Chief Public Information Officer separately conveyed an admission that no show cause notice is served upon individuals withdrawn on disciplinary grounds. Furthermore, the petitioner was denied access to the relevant orders, policies, and standing orders applicable to cadets, on the ground that such information pertains to matters of national security.

Learned counsel vehemently argues that the rules, orders, and instructions issued by the competent authority relating to disciplinary proceedings or withdrawal of cadets from the National Defence Academy cannot be legitimately characterized as a matter of national security or national interest, and therefore, such denial is unjustified and impermissible.

The reply dated 13.07.2021 issued by the respondents to the petitioner s RTI application dated 31.05.2021 is extracted hereunder:

<i>Ser. No.</i>	<i>Queries</i>	<i>Reply</i>
	<i>Para3(b)(i) Details of charges/ misconduct based on which disciplinary action was taken.</i>	<i>Information sought vide Para 3(b)(i) and Para 3(b)(ii) of RTI application</i>

	Para3(b)(ii) Academy Standing Orders and any other orders/regulations/policy governing discipline of cadets and laying down procedure for injury and processing of disciplinary action.	has already been communicated to Mi Subhas Chander Badgujar (Father of Shri Rohit Kumar as per records held with this Office) vide Headquarters National Defence Academy letter number 010799/ 39110/CDT dated 30 April 2021. Relevant extracts of the same are being provided as per Appendix to this reply.
	Para3(b)(iii) Orders/policy laying down procedure for withdrawal from Academy on disciplinary grounds and guidelines if any, defining considerations before award of such extreme punishment.	Information sought vide Para 3(b)(iii) of the RTI application is denied under <u>provisions of Section 8(1)(a) of RTI Act 2005.</u>
	Para3(b)(iv) <u>Proceedings and report of the Inquiry in the case including Video recordings of the statements of witnesses and the accused (applicant) as are understood to have been made.</u>	Information sought vide Para 3(b)(iv) of the RTI application is denied under provisions of Section B(1)(j) of RTI Act 2005, as it <u>infringes privacy of other individuals involved in the case.</u>
	Para3(b)(v) <u>Show Cause Notice served to the applicant for proposed withdrawal from Academy.</u>	<u>Show Cause Notice is not served to individuals being withdrawn on Disciplinary Grounds.</u>
	Para3(b)(vi) Whether an opportunity to seek legal advice for his defence and/or submission of his reply to Show Cause Notice was provided.	Not Applicable as per reply in Para 2(e)
	Para3(b)(vii) Reply by the applicant to the said Show Cause Notice.	Not Applicable as per reply in Para 2(e)

	<i>Para3(b)(viii)</i> Report/comments of Training/Advisory Board or committee etc. with any other designation which is required to give its views with regard to performance of the cadet during training and desirability or otherwise of the proposed withdrawal from Academy	Information sought vide Para 3(b)(vii) Para 3(b)(viii) Para 3(b)(ix) and Para 3(b)(x) of the RTI application is denied under provisions of Section 8(1)(a) of RTI Act 2005.
	<i>Para3(b)(ix)</i> Statement of Case for proposed withdrawal from Academy giving grounds for the same along with supporting material, if any.	
	<i>Para3(b)(x)</i> Orders of the Commandant NDA and the Competent Approving Authority based on which the applicant was withdrawn from the Academy.	

(Emphasis supplied)

Referring to the foregoing, learned counsel for the petitioner vehemently contends that the respondents have acted in a manifest arbitrary and unjust manner, flagrantly violating the principles of natural justice. It is submitted that no charge sheet was ever served upon the petitioner, no fair or proper investigation was conducted, and the petitioner was denied an opportunity to defend himself or to lead evidence in his support.

Responding to the above, learned counsel appearing for the respondents submits that serious allegations of misconduct were levelled against the petitioner which necessitated the Commandant, National Defence Academy, Khadakwasla, to direct a Court of Inquiry into the matter. Pursuant to the findings of the Court of Inquiry, the punishment of withdrawal from the course was imposed.

It is further averred on behalf of the respondents that the petitioner was afforded an opportunity to produce witnesses in his defence before the Court of

Inquiry, however, the petitioner declined to avail the same. Hence, the principles of natural justice were fully complied with and the disciplinary proceedings were conducted in a fair and lawful manner. The relevant extract of the short reply filed by the respondents reads thus: -

"4. That meanwhile, Petitioner and other Cadets were also counselled by the Cadet Counsellor. Over a period of next one and a half months, the Court of Inquiry recorded the statements of all witnesses. Petitioner made a voluntary statement before the Court of Inquiry and after all the statements of essential witnesses were recorded, statement of the witnesses and evidence produced by them were read over to him in the language he understood and he was also afforded an opportunity to read all statements and read the exhibits. After going through the statements and exhibits, he was further offered the opportunity to make additional statements and to cross- question any of the witnesses However, he declined to make any statement or to cross-examine any witness. A certificate to this effect was also tendered by Petitioner and the same is enclosed as Annexure R-1.

5. That subsequently, the Court of Inquiry was finalized and the same was deliberated upon by the Commandant, who directed initiation of Disciplinary action against the Petitioner. Accordingly, Petitioner was marched up to the Battalion Commander in the presence of the Squadron Commander and the Divisional Officer for the following charges:-

(i) DISGRACEFUL CONDUCT OF AN INDECENT KIND, in that he, at xx Squadron, National Defence Academy Khadakwasla, Pune on 18 Feb 2021 at about 0015 hrs with indecent intent made Cadet ABC, a junior cadet of the same squadron get into bed with him in his cabin and made indecent advances, which is contrary to Academy Standing Orders,

(ii) DISGRACEFUL CONDUCT OF AN INDECENT KIND, in that he, at xx Squadron, National Defence Academy

Khadakwasla, Pune in the month of September 2019, with indecent intent entered the cabin of Academy Cadet XYZ, a junior cadet of the same squadron through the window and got into his bed and made indecent advances, which is contrary to Academy Standing Orders.

(iii) MISUSE OF GOVERNMENT PROPERTY, in that he, was found in possession of about 40GB of pornographic material on his Thin Client which is in contravention of Academy Standing Orders

6. *That during the marchup of the Battalion Commander, all the charges levied against the Petitioner were read out by the Battalion Commander and Petitioner was offered an opportunity to present any witness in his defence. However, the Petitioner declined to do so. Seeing the severity of the charges, the Battalion Commander remanded Petitioner to the Deputy Commandant and Chief Instructor.*

7. *Subsequently, Petitioner was marched up to the Deputy Commandant and Chief Instructor in the presence of the Battalion Commander and Squadron Commander, wherein he was asked to provide evidence /produce witness in his defence Since, the Petitioner failed to present any evidence or witnesses in his favour, the Deputy Commandant Chief Instructor remanded Petitioner to the Commandant for Disciplinary action.*

8. *Thereafter, Petitioner was subsequently marched up to the Commandant in presence of the Battalion Commander, Squadron Commander and the Adjutant. The charges were read out to the Petitioner by the Commandant and he was asked to plead for all the charges independently. Petitioner pleaded 'Not Guilty' for offences mentioned in Para 5 (i) and 5 (ii) and pleaded 'Guilty' for offence mentioned in Para 5 (iii). He was again afforded an opportunity to present any evidence/witnesses in his favour. However, the Petitioner failed to present any evidence/witnesses to defend himself. After due deliberations on the statement made by Cadet ABC and Cadet XYZ and*

the documentary evidence available, the Commandant Recommended the Withdrawal of Petitioner as per extant Academy policy on the charges levied against the Petitioner. The withdrawal was finally approved by Headquarters, Integrated Defence Staff, after deliberations at their end."

Learned counsel for the respondents was specifically enquired regarding the existence of any applicable Standing Orders of the National Defence Academy prescribing the procedure for conducting disciplinary inquiries. In response, he submitted that he is not in possession of, nor able to refer to, any such Standing Orders or regulations governing the said procedure.

Further, counsel for the respondents was directed to inform the Rules, Instructions, or Standing Orders applicable to the National Defence Academy which govern the withdrawal of a cadet from the course on grounds of misconduct or disciplinary action. However, he candidly stated that he is unable to refer to any such authoritative provisions.

When further questioned about the issuance of any show cause notice or charge sheet served upon the petitioner, and whether the charges were formally communicated to the petitioner prior to the initiation of the Court of Inquiry, learned counsel for the respondents did not dispute the position as disclosed under the Right to Information Act, 2005. He conceded that no show cause notice was ever served upon the petitioner.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Learned counsel for the respondents produced the original record pertaining to the Court of Inquiry conducted against the petitioner. The same has

been perused and examined by this Court and subsequently returned to the counsel in the same condition.

A perusal of the original record reveals that the Court of Inquiry was convened on 14.03.2021 to investigate allegations of immoral acts of an unnatural preference purportedly committed by the petitioner, based on reports submitted by cadets of 'C' Squadron. The Court of Inquiry cited as many as six witnesses, whose statements were recorded in the course of the inquiry.

It is also evident from the record that copies of the statements of these witnesses, as well as the allegations, were never supplied to the petitioner. The findings of the Court of Inquiry commence from Page No. 40 of the report, followed by confidential deliberations. The recommendations of the Court of Inquiry, along with remarks made by the Commandant and Deputy Commandant, have also been scrutinized. It is evident from the same that none of the inquiry proceedings were countersigned or acknowledged by the petitioner at any stage. The record also reflects that the Court of Inquiry put certain questions to the witnesses after the framing of allegations.

Crucially, the petitioner was never provided with the materials relied upon against him, nor was he furnished with any list of allegations or complaint, and was merely required to respond to questions put to him by the Court of Inquiry. The respondents attempt to characterize this limited questioning by the Court of Inquiry as compliance with the principles of natural justice or as affording the petitioner an opportunity to be apprised of the charges or to defend himself is wholly misconceived and unsustainable.

The conduct of the Court of Inquiry proceedings, as evident from the record, cannot be held to prima facie comply with the fundamental principles of

natural justice. The respondents' failure to refer to any statutory rules, regulations, or Standing Orders prescribing the procedure for conducting such fact-finding inquiries, and more importantly, for the imposition of a penalty as grave and extreme as withdrawal of a cadet from the course, despite the same being asked for necessitates the drawing of an adverse inference against them.

On the face of it, the collection of evidence appears to have been undertaken in a manner wholly dis-associating the petitioner, who was excluded from participation at every stage. The petitioner was not supplied with copies of the charge sheet, list of allegations, or any other relevant documents. Consequently, he was deprived of an effective opportunity to confront or cross-examine the witnesses whose statements were relied upon to substantiate the charges against him.

Even though the respondents have recorded in the inquiry report that the petitioner was shown the statements of witnesses, the said statements do not bear the countersignature of the petitioner. Furthermore, there is nothing mentioned below the statements of the respective witnesses to indicate whether the petitioner was afforded an opportunity to cross-examine them or that he had declined such an opportunity. The contemporaneous record fails to corroborate the assertions made in the inquiry report, thereby casting serious doubt on the procedural propriety and fairness of the inquiry proceedings.

Once a definite finding or conclusive averment is recorded in an inquiry report, the burden of proof shifts to the authority relying upon such report to substantiate the conclusions drawn therein. A mere oral assertion, unsupported by credible and cogent evidence, is insufficient to establish that the principles of natural justice have been duly observed. It is a settled proposition of law that a plea

must be proven through admissible evidence, and the complete absence of such proof renders the plea unsustainable.

Departmental proceedings, particularly those that carry significant civil and professional consequences, are not perfunctory or procedural formalities. They must adhere scrupulously to the standards of procedural fairness and natural justice. This position finds authoritative affirmation in the judgment rendered by the Hon'ble Supreme Court in ***State of Uttar Pradesh v. Saroj Kumar Sinha, reported as (2010) 2 SCC 772***, wherein it was held that fairness and due process are indispensable in any disciplinary inquiry having serious implications for the rights and entitlements of a delinquent employee. The operative part thereof reads thus: -

“29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

The Hon'ble Supreme Court has also held that procedural safeguards should be commensurate with the sweep of the power. It said in the matter of Ranjit Thakur Versus Union of India reported as (1987) 4 SCC 611 that wider the powers,

greater is the need for restraint in its exercise and correspondingly, more liberal in the construction of procedural safeguard envisaged in the statute. The relevant extract thereof reads thus: -

“11. The procedural safeguards contemplated in the Act must be considered in the context of and corresponding to the plenitude of the summary jurisdiction of the court-martial and the severity of the consequences that visit the person subject to that jurisdiction. The procedural safeguards should be commensurate with the sweep of the powers. The wider the power, the greater the need for the restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguards envisaged by the statute. The oft-quoted words of Frankfurter, J. in Vitarelli v. Seaton [359 US 535, 546-47: 3 L Ed 2d 1012, 1021] are again worth recalling:

“. . .if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.””

Since the respondents have chosen not to produce or rely upon the applicable Rules, Regulations, or governing orders, the validity of the disciplinary action taken must be tested against the foundational safeguards enshrined under Article 311(2) of the Constitution of India. This constitutional provision mandates that no government servant shall be dismissed, removed, or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

The Hon'ble Supreme Court, in its authoritative pronouncement in ***State of Punjab v. Amar Singh Harika***, reported as ***AIR 1966 SC 1313***, laid down

the essential procedural safeguards that must be observed in any departmental inquiry. It was held therein that a valid disciplinary process necessarily requires:

- (i) the furnishing of a charge sheet to the delinquent officer, clearly outlining the allegations levelled against him; and
- (ii) the grant of a reasonable and adequate opportunity to the delinquent to respond to and rebut the said allegations.

These procedural requirements are not merely formal or directory in nature but are substantive safeguards designed to prevent arbitrariness and ensure fairness in disciplinary proceedings. Non-compliance with the same vitiates the inquiry and renders the resultant action legally unsustainable.

The non-supply of essential documents—such as the applicable Rules, a copy of the complaint, statements of the witnesses, and the enquiry report—coupled with the denial of opportunity to cross-examine the witnesses, constitutes a cumulative violation of the principles of natural justice. These lapses are neither trivial nor procedural irregularities but go to the root of the disciplinary process, thereby causing manifest prejudice to the charged officer. Jurisprudence on the subject has consistently held that such omissions, whether individually or collectively, vitiate the entire inquiry.

The invocation of privacy, often cited in defence of such non-disclosure, cannot override the fundamental right of the delinquent employee to reclaim his dignity and prove his innocence through a fair and transparent process. The rights of the accused, especially in proceedings bearing the potential for civil consequences such as loss of livelihood and reputation, cannot be subordinated to vague notions of confidentiality.

It must be underscored that the gravity of the allegations, however serious, cannot be a substitute for procedural fairness. The seriousness of the charge cannot be permitted to justify a denial of the right to be heard. Even where the prospects of exoneration may appear remote, the law mandates that an opportunity to defend must be accorded. For, in the realm of disciplinary jurisprudence, it is not merely the outcome that matters, but the process by which such outcome is reached—particularly when honour and dignity are at stake.

Such procedural lapses vitiate the inquiry and cast serious doubts upon the legitimacy of the disciplinary action taken against the petitioner.

The respondents have consciously withheld the most vital piece of evidence in their possession and conducted the Court of Inquiry proceedings in a manner that kept the charged official wholly uninformed about the nature of the proceedings initiated against him and the material or evidence collected in support thereof. In the absence of such disclosure, even a mere belated association of the charged official in the proceedings cannot be deemed to satisfy the essential requirements of the principles of natural justice.

No satisfactory explanation has been offered by the learned counsel for the respondents as to the legal or regulatory source from which the procedure adopted in the present case emanated. The deliberate withholding of such foundational information even from this Court compels the drawing of an adverse inference against the respondents. It is, therefore, deductible that the respondent-authorities did not adhere to any prescribed procedure as contemplated under the applicable Regulations, Standing Orders, or other governing instructions of the National Defence Academy. Such omission further reinforces the conclusion that the disciplinary action undertaken lacks the sanctity of due process.

Consequently, this Court is constrained to hold that the impugned order dated 30.04.2021, whereby the petitioner was withdrawn from the Course at the National Defence Academy, has not been proved to have been passed in conformity either with the principles of natural justice or with the procedure contemplated under the applicable Regulations and Standing Orders governing the National Defence Academy.

In view thereof, the writ petition is allowed and the impugned order of withdrawal dated 30.04.2021 is hereby quashed and set aside.

The matter is remanded to respondent No.2 – the Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi (as informed by counsel for the respondents)– for passing a fresh order in accordance with law, after affording the petitioner a fair and reasonable opportunity of hearing, and strictly in adherence to the procedure prescribed under the relevant Regulations and Standing Orders applicable to the National Defence Academy.

Let the necessary exercise be completed by respondent No.2 within a period of four months of receipt of certified copy of this order.

Petition stands allowed accordingly.

MAY 12, 2025.

Rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No