

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

% **Date of Decision: 29th September, 2020**

+ **W.P. (C) 5622/2020**

DHRUV JAKHAR

....Petitioner

Through: Mr. Karan Dewan and Ms.
Aanchal Jain, Advs.

versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. Satya Ranjan Swain, CGSr.C
with Mr. Sameer Sinha, GP with
Major Katoch, Legal Cell

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE ASHA MENON

W.P.(C) 5622/2020 & CM APPL. 20364/2020 (for interim stay)

1. The petitioner is a young aspirant to the Indian Army and has filed this petition with the following prayers:

“(i) Writ order in the Nature of Certiorari to quash and set aside the withdrawal letter dated 16.01.2020 and/or

(ii) Writ order in the nature of Mandamus directing the Respondents to take back the Petitioner in the training at the IMA for clearing of the remaining three PT tests and

that on qualifying the same, be restored to the original seniority of the 145 Regular Course at par with his Coursemates with all the Consequential Reliefs”

2. The facts as are relevant for the disposal of the present petition are as follows. After clearing the Combined Defence Services (CDS) Examination conducted by the Union Public Service Commission (UPSC) and the interview conducted by the Service Selection Board (SSB), including medical fitness, the petitioner joined the Indian Military Academy (IMA) on 8th July, 2017 for his Pre-Commissioning Training to join the Indian Army as a Commissioned Officer. But it appears that his stay has not been very happy, as is evident from the averments. The petitioner was subjected to ragging and was admitted to the hospital from 17th July, 2017 to 26th July, 2017. On 27th July, 2017, he also filed a complaint against the ragging and the inhuman treatment that he had been subjected to by his seniors.

3. This seems to have been a harbinger for things to follow. Even as per the petitioner, he was subjected to punishments for various infractions, right from the First Term of six months. In routine, the petitioner should have passed out after completing his course as a Commissioned Officer in a year and a half, by the end of 2018. He did complete his First Term successfully and was promoted to the Second Term along with his batch-mates in the 143rd Regular Course IMA. However, a week before the Second Term came to an end in May 2018, the petitioner was served with a Notice to Show Cause as to why he should not be ‘Relegated’ for having accumulated 60 Restrictions in two

terms from 8th July, 2017 to 30th May, 2018. Despite his reply, the petitioner was 'Relegated' and completed his Second Term after repeating it, with the 144th Regular Course IMA.

4. According to the petitioner, without losing heart or motivation, he focused on his training and was promoted to the Final/Third Term on 7th January, 2019. However, on 7th March, 2019, the petitioner was served with another Show-Cause Notice asking him to explain as to why he should not be 'Relegated' to a batch junior for having accumulated 65 Restrictions in two consecutive terms. Despite his request for a fortnight's time to reply, and the supply of copies of the Administrative Instructions of HQ ARTRAC and other documents, he was not provided the time nor the documents. Rather, in an arbitrary manner, the Commandant IMA relegated the petitioner from the 144th Regular Course IMA to the 145th Regular Course IMA.

5. Though the petitioner claimed that he had been unjustly punished and that the punishments were absolutely disproportionate to the alleged offences and were illegal and were imposed against the principles of natural justice and in violation of the Policy issued by HQ ARTRAC, he once again commenced his training in his Final Term on 8th July, 2019 in Zojila Coy Manekshaw Battalion. According to the petitioner, despite his sincere and best efforts, he was unnecessarily targeted and singled out by his Company Commander (Coy Cdr). Due to the negativity of the Coy Cdr, the petitioner was forced to report the matter to the Deputy Commander vide his letter dated 19th August, 2018 and also sought an interview. However, instead of ordering a Court of Enquiry against the Coy Cdr, the Battalion Commander, Manekshaw Battalion constituted an

Honour Code Committee on 9th September, 2019 against the petitioner.

6. The grievance of the petitioner is also with regard to the conduct of the Honour Code Committee proceedings. According to him, it was illegally constituted from 08 GC Members from the same Battalion, whereas, as per the Rules, they were supposed to be from different Battalions to ensure transparency and prevent miscarriage of justice. Secondly, this Honour Code Committee was attended by the Coy Cdr against whom the petitioner had complained. Further, a Major from the Manekshaw Battalion was nominated as the Presiding Officer of the Honour Code Committee and indirectly exercised influence on the Junior Officers. The petitioner further claimed that on account of the fear exerted by the Coy Cdr who used to start shouting at the petitioner whenever he started to speak in front of the Honour Code Committee, he submitted a written statement on 15th September, 2019. The written statement was resubmitted on 24th September, 2019 regarding non-adherence to Rules because of the presence of his Coy Cdr during the proceedings of the Honour Code Committee.

7. With regard to the final Physical Training tests, the petitioner submitted that these tests were slated for 7th November, 2019 in the morning during PT time. However, the previous night, on the directions issued by the Coy Cdr Zojila Coy, the petitioner was made to stand outside the Battalion Duty Officer's room in Full Pack 08 with 40 Kgs of sand and bricks filled into it from 2300 hours to 0200 hours. As a result, the petitioner was completely exhausted and he could not perform to the best of his physical capacity. That was the reason why he failed in three of the PT tests, namely, 'Toe-Touch', 'Rope' and 'Vault' and he sought

another chance to clear these tests.

8. Then suddenly on 9th November, 2019, the petitioner states, he was called by his Battalion Commander and awarded several restrictions in one go, which were awarded with back dates. These illegal punishments, in the form of 26 restrictions awarded by the Bn Cmdr sealed the future of the petitioner and were only intended to ensure that the petitioner gets withdrawn from the IMA. Instead of providing him with another chance to clear the remaining PT tests, as requested, the petitioner was issued another Show-Cause Notice on 19th November, 2019 asking him to explain and show cause as to why he should not be 'Relegated' for failure to attain requisite minimum standard in Physical Training, and subsequently withdrawn as per Para 70(a)(ii) of the HQ ARTRAC.

9. Once again, the petitioner asked for 14 days to submit his reply and in the meantime, to be afforded one last chance to appear in the PT tests and if he cleared the same, to be permitted to be passed out of the IMA as a Commissioned Officer on 7th December, 2019. However, despite making this, request the petitioner was 'Relegated' and subsequently ordered to be withdrawn from the IMA on 23rd November, 2019. In the backdrop of these facts the petitioner has sought the quashing of the withdrawal letter dated 16th January, 2020 and further directions to the respondents to permit the petitioner to clear the remaining PT tests and on qualifying the same to be restored to the original seniority of the 145th Regular Course IMA.

10. The pleadings have been reproduced in some detail as the learned counsel for the petitioner laid emphasis on these averments to submit that the petitioner was a capable person who has faced challenges stoically

and his sincere efforts reflected his keenness to serve the country and merely because of the prejudice and vindictiveness of his superiors, the petitioner should not be denied fulfilment of his dreams. The respondents dispute these allegations and in turn, claim that the Officers at the IMA had given every kind of support to the petitioner to improve his attitude and performance and yet the petitioner could not fit into the discipline required for a life in the Indian Army and was also found physically unfit, particularly because of being over-weight and that action has been taken strictly as per the Rules and upon the third Relegation, withdrawal was the only course left with the IMA.

11. It has to be clearly understood that we cannot go into a factual investigation into the truthfulness of these allegations. Nevertheless, vide order dated 25th August, 2020 we issued the following directions:

“Though for the aforesaid reasons we are not inclined to entertain this petition but since the counsel for the respondents Indian Army accompanied by Major Katoch from the Legal Cell of the respondents Indian Army appears to have all records before them and on the basis of which they have been refuting the factual contentions of the petitioner, particularly as to the constitution of the Honour Code Committee, we deem it appropriate to go through the said records before deciding whether the petition deserves to be entertained or not. Major Katoch to deliver to the residence of one of us (Justice Asha Menon) the complete records leading to the impugned order dated 16th January, 2020 including the Administrative Instructions and other instructions and Policy Documents, if any in accordance wherewith the actions leading to the impugned order dated 16th January, 2020 have been taken.”

12. These records have since been delivered at the residence of one of us (Justice Asha Menon). We have perused the same. We find therefrom that the IMA has acted strictly in accordance with the Rules of HQ ARTRAC, in respect of the punishments, the 'Relegations' as well as the 'withdrawal'. The Honour Code Committee has been properly constituted and proceedings fairly conducted and decision taken fairly. The petitioner had claimed that the Honour Code Committee had comprised of GCs from the same Battalion. However, the records that were maintained contemporaneously show that the members of the Honour Code Committee were drawn from three other Coys, i.e. Sangro Coy, Imphal Coy and Jessore Coy. The Coy Cdr Lt.Col. Yuvraj Malik was not involved in the proceedings. His presence has been noticed only during the questioning/evidence recording.

13. The explanation offered by the petitioner for failure in the 3 Physical Tests may appear plausible but for the fact that the records reveal that the fundamental cause of failure was the obesity of the petitioner. From November, 2018, the petitioner has not been able to clear the 'toe-touch' and other Physical Tests despite opportunities during the mandatory and compensatory attempts and even in the Commandant's Review attempt. This would also show that the petitioner has been granted fair opportunity to clear his Physical Tests. Despite counselling in this regard, the petitioner seems to have not taken adequate measures to reduce his weight. By no means were his instructors acting with bias or vindictiveness if they expected a cadet to withstand rigorous physical challenges.

14. With regard to the accusation that there is no record of the punishments imposed, nothing could be farther from the truth. Suffice it to note that the punishments have been recorded since the year 2017 right up to 2019 and reveal that the petitioner had been subjected to various punishments by various authorities for various offences and not just by the Coy or Bn Cdr. The dates have been recorded and the names of the officers who had imposed the punishments are also recorded along with the reasons for the imposition of such punishments.

15. The father of the petitioner, Lt.Col. P S Jakhar had made a fervent plea to consider the case of his son leniently, as the commissioning of his son as an Officer of the Indian Army meant a lot to him as it would be the 4th generation from his family to join the Indian Army. While it may be possible for us to sympathize with the Lt.Col., but it is not a father's ambition that defines the standards for selection as a Commissioned Officer in the Indian Army. The records reveal that the petitioner was finding it difficult to settle into the regimented and highly disciplined lifestyle at the IMA. Right through from October, 2018 to August, 2019 the petitioner was counselled, mainly focused on the need for discipline. The petitioner used to absent himself from training and special and critical events by malingering or reporting sick. It was this absenteeism and lying about the reasons for such actions that led to several of the punishments as also the Honour Code Committee being constituted against him.

16. That the petitioner lacks the temperament is amply evident from the fact that from his First Term, in September, 2017, right till August, 2019, the petitioner was repeatedly missing from training schedules.

From November, 2017 he had been punished for arguing with Senior Officers. Throughout his Second Term he absented himself from not only Physical Training but also from the performance of his punishments. He was punished for misbehaviour too. Repeatedly he was found disregarding the chain of command and punishments did not seem to bring about the desired result. Right from the First Term till the 3rd Relegation, the petitioner continued committing the same kind of offences which were in the areas most crucial to the Armed Forces, namely, building physical and mental strength and developing utmost and unquestioned discipline in following the orders of the superiors.

17. In fact the perusal of his statement given in writing to the Honour Code Committee reflects the same disdain for discipline. It is indeed far-fetched to allege, as the petitioner has, that the punishments given to him between 9th November, 2019 and 11th November, 2019 totaling 26, were illegal and intended to make up for a shortfall in restrictions to throw him out of the IMA. In fact, they were founded on the conclusions of the Honour Code Committee which found him guilty of making false statements to cover up an offence and levelling false allegations against the Coy Cdr and for disobeying orders to undergo punishments. The use of language and the insistence that he was right whereas everybody else was wrong and levelling accusations that the Honour Code Committee was also biased and predetermined in its attitude to the petitioner, in this written statement, underscores the correctness of the decision of the IMA to withdraw him from the Academy.

18. It is amply clear to us that the petitioner is not suited to a military lifestyle and possibly the desires of his father pushed him into this

direction. There is no doubt that the petitioner has struggled to meet the expectations of his father. The father would be well advised to allow his son the freedom to choose his life path and allow him to blossom forth in whatever he so chooses, which is certainly not the Indian Army. The petitioner and his father would do well to accept the decision of the IMA gracefully and utilize all the learning in the 2 years spent by the petitioner at the IMA to work towards a bright future in any other chosen field.

19. There is no merit in the present petition which is accordingly dismissed.

ASHA MENON, J.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 29, 2020

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