

**Karoon Sem Vs. Union of India and anr**

**Karoon Sem Vs. Union of India and anr**

**SooperKanoon Citation :** [sooperkanoon.com/1159121](http://sooperkanoon.com/1159121)

**Court :** Delhi

**Decided On :** Jul-15-2014

**Judge :** Kailash Gambhir

**Appellant :** Karoon Sem

**Respondent :** Union of India and anr

**Judgement :**

\$~7 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 5237/2012  
KAROON SEM ..... Petitioner Through: Mr.Sameer Jain, Advocate versus UNION  
OF INDIA AND ANR Through: % ..... Respondent Dr. Ashwani Bharadwaj,  
Advocate CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR.  
JUSTICE NAJMI WAZIRI

ORDER

1507.2014 KAILASH GAMBHIR, J.

(ORAL) 1. By this petition filed under Article 226 of the Constitution of India, petitioner is seeking issuance of writ/direction or order directing the respondents to provide the benefit of letter dated 3.10.2008 and 14.5.2009 to the petitioner and refund the amount paid by the petitioner towards the cost of training along with interest.

2. Grievance of the petitioner in the present writ petition filed under Article 226 of the Constitution of India is that he had joined the National Defence Academy in

June 2006 after having cleared the National Defence Academy examination conducted by the UPSC and had paid an amount of Rs.5,09,400/- towards the cost of training charges to the Academy but was not reimbursed the said amount after his candidature was withdrawn by the NDA on disciplinary grounds as per the settled criteria.

3. The facts of the case are not in dispute. However to throw light on the short controversy involved in the present case, it would be pertinent to mention that the petitioner had joined the National Defence Academy, Khadakwasla, Pune in June 2006 and started participating in the officers pre-commission training after having cleared the NDA examination. On 2nd February 2008 he was withdrawn by the NDA on disciplinary grounds and thus his name was struck off from the list of selected candidates with effect from 7th April 2008. The petitioner has however paid an amount of Rs.5,09,400/- towards the cost of training charges as levied by the Academy. On 3rd October 2008, respondent No.1 , Ministry of Defence, Government of India issued a letter that conveyed about discontinuing the earlier policy of recovering the cost of training from the cadets who were also withdrawn by the NDA on disciplinary grounds.

4. In furtherance of the said decision, Ministry of Defence, Government of India through another communication dated 14th May 2009 waived off the cost of training programme amounting to Rs.2,44,46,924.46 with regard to 135 cadets who were also withdrawn on disciplinary grounds from NDA from February 1978 to 03.10.2008. However, the petitioner herein was not accorded the benefit of the said policy. As per the petitioner the action of the Government in creating a sub-classification within a Class is an utter violation of his fundamental right granted to him under Article 14 of the Constitution of India and the same is also discriminatory in nature. It is also the case of the petitioner that two similarly situated persons cannot be treated differently simply because the petitioner had already deposited the said amount while those 135 cadets did not deposit the cost of the training programme. One of the cadet Mr. Varun Mishra was also granted the benefit of this policy by the Division Bench of this court vide order dated 30.11.2009, whereby the Division Bench allowed the writ petition bearing No.W.P.(C ) 5957 of 2008 and observed that the cadet is not required to pay any

amount as against the cost of his training campaign. Nevertheless, the grumble of the petitioner is that 12 cadets including the petitioner were arbitrarily denied the said benefit by the concerned authorities despite having withdrawn their candidature between the requisite dates. Being aggrieved of the alleged arbitrary policy, the father of the petitioner even made multiple representations but in vain.

5. In opposition to the claim of the petitioner, the only ground raised by the counsel for the Respondent is that the letter dated 14 th May 2008 is prospective in nature and in the said letter, it was clearly mentioned that the cases which were already settled will not be reopened. As per the respondents the case of present petitioner was already over in the year 2008 and therefore, his claim for refund of the said amount could not be reopened in terms of the letter dated 14th May 2009.

6. We have heard learned counsel for the parties and perused the record of the case.

7. The stand taken by the respondents appear to the court as totally irrational and illogical. It is quite amusing to find that the petitioner is suffering because he had paid the amount of Rs.5,09,400/- towards his training programme while 135 cadets who never paid the cost of the training and who were also withdrawn on disciplinary grounds were placed on better footing by waiving of the cost of their training programme. The act of the respondent is not only iniquitous but is highly discriminatory against the petitioner whose only fault was that he had paid the cost of training. Every decision of the Government should be uniform, just and fair to the similarly placed persons and to take any decision favouring one set of candidates and disfavoring the remaining set of candidates without there being any basis or rationale cannot stand the test of reasonableness and fairness. Cadets placed on the same footing cannot be treated in a biased manner. It is the quintessential feature of our constitution that the law must prevail / operate equally on all persons under like circumstances. In the present circumstances, we hardly find any justification coming from the Government to the effect that why the cases that were already settled would not be reopened.

8. Once the Government had taken a decision to waive of the cost of training in respect of 135 cadets whose candidature was also withdrawn on disciplinary

grounds then no differentiation could have been made visa-vis those candidates whose candidature was also withdrawn on disciplinary ground but who had paid the cost of training. There is no intelligent differentia or rationale in creating such a classification. Finding the said decision of the Government totally unjust and iniquitous, the writ petition filed by the petitioner is allowed and consequently, this court deems it fit to issue a writ of mandamus directing the respondents to provide the benefit of letter dated 3.10.2008 and 14.5.2009 to the petitioner and refund the amount paid by the petitioner towards the cost of training within a period of four weeks from the date of this order.

9. With aforesaid directions, this petition stands disposed of. KAILASH GAMBHIR,  
J NAJMI WAZIRI, J JULY15 2014 pkb

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**