

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

% *Judgment Reserved on: July 15, 2016*
Judgment Delivered on: July 19, 2016

+ **W.P.(C) 2772/2014**

EX FLIGHT CADET MOHIT BHANDARI Petitioner

Represented by: Mr.S.S.Pandey, Advocate with
Mr.H.S.Tiwari, Advocate

versus

UNION OF INDIA AND ORS Respondents

Represented by: Mr.Ankur Chibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The 24th day of September, 2013 was a day in the life of the petitioner which he shall rue. In the cadets changing room at the Air Force Academy in Dundighal (Hyderabad) he chanced upon the ATM card of his course mate Flt.Cdt.Shubhojeet Roy along with its pin code. The devil in the petitioner overpowered the goodness in him. He proceeded straight to the nearest ATM and withdrew ₹5,000/-. The information of ₹5,000/- from the account was intimated the same day by the bank to Flt.Cdt.Shubhojeet Roy who informed the instructor of the fact that his ATM card had been stolen and ₹5,000/- withdrawn from his account. The petitioner admits having knowledge of the fact that Flt.Cdt.Shubhojeet Roy got knowledge of the theft of his ATM card and withdrawal of ₹5,000/- from his account the same day and had lodged a complaint with the instructor. The petitioner also learnt that the Air Force

Authorities had addressed a letter to the bank the same day demanding video footage of the ATM Machine wherefrom the withdrawal had taken place and thereafter Wg.Cdr.A.Popli directed all cadets undergoing training to fall-in and gave an opportunity to the perpetrator of the wrong to own up (probably on the assurance of a lenient view of the misdemeanour being taken); but the petitioner pleads that he could not muster the moral courage before his buddies. He wrote a letter to Flt.Cdt.Shubhojeet Roy in which he did not disclose his identity but stated that the author of the letter was a good friend of his and prayed that Flt.Cdt.Shubhojeet Roy should in the interest of his undisclosed friend withdraw the complaint. The letter was, as disclosed during arguments and not in the pleadings, kept under the pillow of Flt.Cdt.Shubhojeet Roy who saw the same and handed it over to the instructor. From the contents of the letter Flt.Cdt.Shubhojeet Roy understood that it was the petitioner who had committed the wrong. The petitioner apologized to him and not only returned to him the ATM card but even ₹5,000/-. Petitioner claims that Flt.Cdt.Shubhojeet Roy orally requested the instructor that he wanted to withdraw the complaint.

2. Air Force Order 05/2012 concededly came into play. As per the order, a Court of inquiry or a formal investigation is not a pre-requisite for initiating disciplinary action against a Flight Cadet, but if opined to be desirable, a Court of inquiry or a formal investigation could be ordered where the circumstances of the case were not clear or where it was felt that certain additional inputs or information was warranted or where the facts presented were prima-facie indicative of a larger perspective or involvement of more number of cadets. The procedure contemplated by AFO 5/2012 required to be followed was admittedly followed at the Training Review Board (TRB) and since no

arguments were advanced in relation thereto, suffice it to note that the petitioner was made known of the charge against him i.e. of stealing the ATM of his buddy Flt.Cdt.Shubhojeet Roy and unauthorizedly withdrawing ₹5,000/- from his account, a fact which petitioner admitted in spite of being warned as regards the consequence thereof. The petitioner made the following statement:-

“STATEMENT OF (INDIVIDUAL MAKING CONFESSION)

I, FLT CDT M BHANDARI (175794-K) of AFA hereby make the following confession voluntarily without any threat, inducement or promise.

I Flt Cdt M Bhandari (175794-K) undergoing Stage-I training at AFA states that “I am undergoing Stage-I training at AFA along with Flt Cdt S.Roy since 01 Jul 13. On 25 Sep 13 I was in trainees’ changing room, and looking for a cigarette in Flt Cdt S.Roy’s bag. While looking for the cigarette I came across the Debit card and its ATM PIN in the bag. I took out the Debit card and committed to memory its ATM PIN. Later in the evening I went to the ATM near the GDOT faculty and withdrew ₹5000 using the Debit card. Next morning I came to know that the matter has been reported to senior officers in the Faculty of Flying. On hearing this I got scared and decided to confess the theft to Flt Cdt S Roy, thus I wrote a letter to him saying the same. However, I could not gather enough courage to disclose my name in the letter. On 26 Sep 13 morning, I kept the Debit card on the bed kept in the trainee’s changing room. On 27 Sep 13, when I was confronted by Gp Capt V Roy and Wg Cdr H S Luthra, I confessed to having taken the Debit card and withdrawn the money. I felt tempted to steal the Debit card as I have not been able to withdraw money from my account as I do not possess a PAN card and the SBI authorities have blocked withdrawal of money from my account. Once the matter was reported to higher authorities I got scared and could not gather enough courage to confess to either Flt Cdt S Roy or to any of the instructors in the Flying Faculty. This was

a rash and irresponsible act by me as I felt in urgent need of money. I ended up stealing the card as I felt desperate for money. However I am fully aware that this is an act of gross indiscipline and promise to never repeat such an act in future. I request you to grant me one chance to prove my worthiness to serve in the IAF.

*Sd/-
(M Bhandari)
Flt Cdt
Date/Time
18/10/13/1239hrs”*

3. The Chief Flying Instructor under whom the petitioner was undergoing training was called upon to offer his comments concerning petitioner's general character, behaviour, discipline and performance. The Chief Ground Instructor taking theory classes was likewise called upon to offer his comments concerning petitioner's general behaviour in the classroom. Comments from the Training Co-ordination Officer and the Senior Instructor (Outdoor Training) as also the Chief Instructor (Flying) were obtained and we note that as per the record all reported nothing adverse against the petitioner. Neither reported any warning or cautioned being administered to the petitioner. It was reported that the petitioner had been attending training classes regularly as also had been undertaking the outdoor training.

4. The looming nimbus clouds gave a forewarning to the petitioner that a storm may shatter his dreams. It is not in dispute that the petitioner is an alumnus of Sainik School Gorakhal, Nainital, Uttarakhand where he was admitted in the primary section by his father and he graduated from the school in the year 2010 when he obtained his Senior Secondary Degree. Since his childhood days he aspired to serve the nation by guarding its sky and this had led him to take the examination conducted by the Union Public Services

Commission for induction into an Armed Force and clearing the Pilot Aptitude Test after he found his name in the merit list of the candidates selected to be offered appointment in an armed force of the union, the petitioner was inducted as a flight cadet and was sent to the Air Force Academy, Dundigal Hyderabad for training and during training the petitioner obtained a degree in Bachelor of Science awarded by Jawahar Lal Nehru University, New Delhi. Unfortunately for the petitioner he was only about a month away from training being completed when the unfortunate incident took place. But for the unfortunate incident he would have been commissioned as a Flight Lieutenant in the Indian Air Force. He apologized to one and all and expressed remorse at his misadventure. But fate had willed it otherwise. The nimbus clouds were followed by a storm. The aspirations of the petitioner were smashed into pieces when on November 27, 2013 he was handed over a letter addressed to his father terminating his further training and informing petitioner's father to take the petitioner back; to put it simply; the petitioner lost his status of a flight cadet. The record shows that the Training Review Board presided over by AVM V.R.Chaudhary comprising Sqn.Ldr.Niroo Sharma, Sqn.Ldr.S.Sukant and Gp.Cptn.Updesh Sharma opined that theft was listed as a serious indiscipline as per clause (d) of Para 9 of AFO 05/2012. The theft was a considered act of the petitioner. The recommendation was to terminate petitioner's further training as envisaged by para 14 and clause (d) of Para 18 of AFO 5/2012. The opinion is dated October 24, 2013. The opinion was concurred to by Air Martial R.G.Burli the Commandant of the Air Force Academy and this was reflected in the letter dated November 27, 2013.

5. The petitioner addressed a communication to the Chief of the Air Staff on December 10, 2013. It is a poignant letter.

6. The petitioner wrote:-

*AIR FORCE ACADEMY,
DUNDIGAL
HYDERABAD-500043
10th Dec 2013*

*CHIEF OF AIR STAFF
INDIAN AIR FORCE,
VAYU SENA BHAVAN,
RAFI MARG,
CANNAUGHT PLACE,
NEW DELHI-110001*

REFERENCE: AFA/C 1013/1/5/TRG

***SUBJECT: REQUEST FOR AN INTERVIEW REGARDING
REDUCTION OF PUNISHMENT AWARDED***

Sir,

1. With due regards I wish to state that I was undergoing flying stage I training in the Air Force Academy, Dundigal along with 193 PC course. But the Training Review Board recommended my case for termination of training and cadetship due to a silly mistake of mine.

2. It was the 24th of September 2013 when I was in the Cadets' Changing Room when I came across the ATM card of my course mate Flt Cdt Shubhojeet Roy along with its PIN code. I, then withdrew ₹5000 from his account. He reported the same to his instructor, Sqn Ldr A Hakin who further informed the higher authorities regarding the loss of ATM card and withdrawal of money. The case was then reported to the bank authorities demanding the video footage of the ATM machine. All the cadets were gathered and the case was disclosed to us by Wg Cdr A Popli as a warning and a chance to own up in time But I could not gather enough courage to do so and hence wrote a letter to

Flt Cdt Shubhojeet telling him that I am a very good friend of his and he should take back the case but I did not disclose my identity. I was aware of the consequences of owning up but my limited mindset prevented me from that. I could not think of the heavy repercussions coming my way.

3. The fact or reason as to why I took that ATM card and withdrew money is still a big question in my mind. Was I not having enough money in my bank account? I was. Was it then some urgent need of money? Perhaps not. Was it some kind of prank that I was trying? Does not seem so. But then, what was the reason? At that time I had ₹13000 in my bank account though I could not access it due to unavailability of a PAN card which is necessary for validation of account. Maybe that was the reason. Maybe it was the financial condition of my family that I did not want to put pressure on them to send me more money. There are a lot of maybes but none promises content to my mind.

4. After my TRB was done I was in a different situation. I was not allowed to attend any classes henceforth nor could I take any exams. For the last two months my daily routine included sitting in the waiting room outside the Training Co-ordination Officer's office for 6-7 hours with some freedom in the evening. This was the time when I got time for self introspection. The last few decisions made by me had changed my life totally. Despite my friends and instructors telling me that people sitting at the higher levels in the chain of command will surely think about all these years I have put in to get into the services, I knew that something very bad is coming up. Though I could not figure out the reason as to why I withdrew the money, I returned the money back to Shubhojeet unused.

5. I had my schooling from Sainik School Ghorakhal, Nainital. I got into military life at the age of 10 and through all these years I saw my future flying those mighty fighter jets. I got through NDS after my 10+2 and those next three years shaped my life. All these years of training and what I got now is nothing.

6. *Sir, I ask not for forgiveness to my crime because I know it is a grave mistake, but I request for justice to my 10years of sacrifice. Isn't it unfair for throwing all those years of training into the bin just for one mistake? Sir, if you dig out my records from school or NDA, you will never find such a crime in my files. This never happened before and I promise it won't happen again. I have already lost six months of seniority, its been more than seventy days that I flew that Pilatus PC-7 MKII, and life is so dull and eventless now. Sir, flying had always been my passion all my life and I cannot think of other options in the civil life which is full of self-centered and selfish people. I want to live for the pride and honour of the services and of the nation.*

7. *Sir, please provide me with just one more opportunity to prove myself. I promise to live up to the standards of the services and bring honour to the country. I request you to please allow me to have an appointment with you so that I could present my case in front of you. If not possible, then please meet my parents who believe you to be the only last hope for my future.*

Yours sincerely

*Mohit Bhandari
(Flt Cdt)”*

7. Present writ petition came to be filed when the chief of the air staff ignored the letter sent by the petitioner, and of the various grounds urged, learned counsel for the petitioner conceded that none except one merits a consideration. The argument advanced was by conceding that AFO 5/2012, vide paragraph 8 thereof listed minor indiscipline and vide para 9 thereof listed serious indiscipline and as per clause (d) of para 9 theft was a serious indiscipline. Any other indiscipline not listed in paragraph 9 and 10 fell in the residual para 10 of the AFO. With reference to para 12, the argument was that indiscipline contemplated by paragraph 9, on indictment, warranted : (i) to

ascertain the facts of the case; (ii) to consider the circumstances which led to the commission of the offence; (iii) consider the overall performance of the flight cadet in training; and (iv) consider the previous history regarding discipline of the flight cadet and then to exercise the power under para 18 to punish, which could be to impose a punishment contemplated by clauses (a), (b), (c) and (d) of para (d); and this according to learned counsel for the petitioner meant that the punishment for serious indiscipline had to be by way of a corrective measure, meaning thereby, the extreme penalty of termination of training had to be last resort and therefore reasons need to be recorded (other than to state that the indiscipline was serious) as to why the harshest of the various penalties prescribed was inflicted. Learned counsel urged that in three years of traineeship there was not even a trivial infraction committed by the petitioner concerning his discipline, his behaviour and participation in the activities of the training academy. His instructors had reported that the petitioner was punctual in undertaking practical and theory training as also in participating in the outdoor activities. To put it in a nutshell, the argument was that the penalty was vitiated in that para 12 of the AFO was violated and in the alternative it was disproportionate, keeping in view the guidelines contemplated by the AFO 05/2012.

8. The argument in rebuttal was that theft is a serious wrong treated as a felony by the penal law. Learned counsel for the respondent urged that for having committed theft the termination of training cannot be labelled as a penalty which shocks the conscience of the Court.

9. Concededly para 8 of AFO 5/2012 lists minor indiscipline and para 9 lists serious indiscipline and clause (d) thereof provides as under:-

“Serious indiscipline

(a) x x x x x x

(b) x x x x x x

(c) x x x x x x

(d) **Thefts/Fraud:** *Strict disciplinary action will be taken against Flight Cadets, who are involved in any kind of theft/fraud/forgery.”*

10. Under the caption ‘**Corrective Measures**’ para 12 of AFO 5/2012 stipulates as under:-

“Corrective Measures/Punishment for Serious Indiscipline

12. Any Flight Cadet charged with committing any of the serious offences mentioned in Para-9 & 10 above will be investigated. The Flight Cadet in the first instance of indiscipline (whether on the ground or in the air), will be brought before his/her Flight Commander/ Immediate Superior Officer, who will informally investigate the case. The Flt Cdr/Immediate Superior Officer may dismiss the case as deemed fit or refer the matter to the Chief Instructor (Flying), Chief Instructor (Ground), Senior Instructor or Chief Flying Instructor (CFI) as the case may be Chief Instructor (Flying), Chief Instructor (Ground), or Senior Instructor or CFI on receiving the report on breach of discipline on the part of a Cadet will:-

(a) *Ascertain facts of the case*

(b) *Consider the circumstances which led to commission of the act.*

(c) *Consider overall performance of the Flight Cadet in training.*

(d) *Consider previous history (regarding discipline) of the Flight Cadet, if any.*

(e) *Dispose of the case according to Para 18(a) below or*

recommended the case to higher authority.”

11. The power of punishment in different authorities and the kind of penalty which can be levied is provided for in para 8 of the AFO. The para reads as under:-

*“18. **Powers of Punishment.***

The following authorities are empowered to take action against Flight Cadets by imposing one or more of the corrective steps mentioned under each:-

*(a) **Chief Instructor (Flying)/Chief Instructor (Ground)/Senior Instructor without a TRB.***

(i) Denial of privileges.

(ii) Extra duties, endurance run, PFR, etc, not exceeding three in number

(iii) Extra drills not exceeding seven in number.

*(b) **Deputy Commandant/ Commanding Officer/Chief Instructor Without a TRB***

(i) Reprimand.

(ii) Deprivation of any appointment held.

(iii) Admonition

(iv) Reduction from any appointment held.

(v) Extra duties, endurance run, PFR, etc, not exceeding seven in number.

(vi) Extra drills not exceeding fifteen in number.

*(c) **Commandant/AOC/Station Commander/Commanding Officer Without a TRB.***

Commandant/AOC/Station Commander may dispose off the case by awarding any of the following punishments and or any combination (of the punishments mentioned in Para 18(a) & (b) above.

(i) Severe Reprimand

(ii) Curtailing of mid-course leave

*(d) **Commandant/AOC/Stn Cdr/Commanding Officer with a TRB or Col.***

Commandant/AOC/Stn Cdr is to order a TRB or a Col followed by TRB and award/recommend any of the following punishments and or any combination of the punishments mentioned in Para-18(a), (b) & (c), above:-

(i) Re-fighting

(ii) Deferment of Commission up to 15 days.

(iii) Recommendation for Termination of training

(iv) Recommendation to HQ TC for deferment of commission for more than 15 days and up to 30 days.

*(e) **By SASO TC***

SASO Trg Command may award deferment of commissioning up to 30 days, based on recommendations of TRB & other relevant factors.”

12. In the disposal of a complaint against a flight cadet where the act attributable to the cadet constitutes a serious offence, the Training Review Board has to keep in mind apart from the facts of the case proved at the inquiry and the circumstances which led to the commission of the act, the overall performance of the flight cadet during training and previous history

regarding discipline, for this is the mandate of clause (c) and (d) of para 12 of the AFO.

13. No doubt para 18 vests the power to recommend termination of training, we find that this is the last but one penalty which is listed. The range is from denial of privileges, performing extra duties and extra drills, reprimand, admonition, severe reprimand, re-fighting and deferment of commission.

14. An act of delinquency would have a range from being vagrant – passing through maladjustment and incorrigible, to reach the end of the spectrum : of uncontrolled and dangerous behaviour. Whenever a discretion is vested concerning a penalty to be levied for a wrong it is obvious that the intent of the law is to temper justice in the enforcement of the letter of the law. Further, if the law casts an obligation on the authority vested with the power to levy a penalty to take into account not only the gravity of the wrong but even the previous history regarding the general character of the wrong doer, a meaning would have to be given to said factors required to be taken into account by the disciplinary authority. As noted above, clauses (c) and (d) of para 12 of the AFO applicable cast an obligation upon the Review Training Board to factor in the overall performance of the petitioner during his traineeship as a flying cadet and consider his discipline in the academy. This arduous task of determining as to what should the penalty be levied has been made simple for the members of the Review Training Board by the guiding factors listed in clauses (c) and (d) of para 12 of the AFO. The two clauses require that the punishment should not be disproportionate to the crime keeping in view the general character of the wrong doer.

15. It is apparent that the concern of the AFO is to reduce subjectivity in the proportional sentencing requirements and casts an obligation to analyze not

only the nature of the offence but compare the same with the sentence keeping in view the general conduct and reputation of the flight cadet, it has to be kept in mind that the cadets are immature, impulsive and prone to drift.

16. The petitioner has brought out his dilemma in his letter dated December 10, 2013. In paragraph 3 he has reflected on his conduct and had tried to fathom a reason for his misadventure. He could not find one. He posited the question whether he was short of funds. And answered himself that it could not be because he had enough money in his bank account. He posits the next question whether it was a prank. He answered truthfully that it does not seem so. He then posits the question whether he committed the wrong to relieve financial stress on his family. But couldn't answer the question. He records that there could be a lot of 'maybes' but answers that none could come to his mind. This may be wrong. The correct reason is recorded in the petitioner's confession. Due to not possessing a PAN card his banker had blocked his ATM card.

17. The opinion of the Training Review Board reads:-

“(a) Flt.Cdt.M.Bhandari (175794-K) is an Ex NDA trainee undergoing Stage-I flying training at Air Force Academy since 01 Jul 13.

(b) The trainee's performance has been average in flying and in ground subjects and he has not been awarded any warning or caution till now.

*(c) In his statement given to the TRB, Flt. Cdt. M. Bhandari (175794-K) has admitted, to unauthorized withdrawal of ₹5000 from the account of Flt Cdt S.Roy, using Debt card of Flt Cdt. S.Roy. The same has been corroborated by an anonymous letter (placed as **Exhibit 'A'**) written admittedly by Flt Cdt. M.Bhandari and CCTV footage (recorded in CD) obtained from SBI AFA placed as*

Exhibit ‘B’. *The confessional statement made by Flt. Cdt. M.Bhandari along with video recording in the presence of Recording Officer and independent officer and is placed as Exhibit ‘C’.*

(d) *This act of Flt. Cdt. M.Bhandari (175794-K) was a deliberate act of gross indiscipline amounting to theft. This act is also indicative of serious lack of OLQs in Flt. Cdt.M.Bhandari.*

(e) *At this stage, the Flight Cadet has flown a total of 31 sorties/26:35 hrs.*

(f) *Theft is considered an act of serious indiscipline as per para 9(d) of AFO 05 of 2012.*

(g) *In view of the above the Training Review Board recommends termination of further training of Flt.Cdt. M.Bhandari (175794-K) as per para 14 and 18(d) of AFOR 05 of 2012.”*

18. We find that except for highlighting that theft was a serious indiscipline, the members of the Board have nowhere recorded, though it forms a record of the proceedings, that they had considered the report given by the Chief Flying Instructor, Chief Ground Instructor, Training Coordination Officer, Senior Instructor (Outdoor Training) as also the Chief Instructor (Flying); all of which show that petitioner’s general character, behaviour, discipline and performance during training was of that of a disciplined cadet. Not once in three years was anything adverse noted. He had attended his training classes regularly and had also undertaken the outdoor training with the commitment which was required. In his three years’ traineeship he had not been warned or cautioned even once.

19. We accordingly conclude that two important guidelines in the

sentencing policy, which are beneficial to the petitioner, have been overlooked. The backdrop to the said two guiding principles is the fact that since childhood the petitioner aspired to be a member of the armed force. He studied in a Sainik School. Keeping in view his general conduct and commitment to become an honourable flying officer evinced during his three years' training at the academy the solitary wrong which may be a serious offence, warranted mitigating factors to be intertwined properly in the penalty levied; and since guidelines framed by the authorities are found to be vitiated we dispose of the petition setting aside the penalty imposed of termination of traineeship; directing the Chief of the Air Staff to peruse our decision and keeping in view paragraph 12 of AFO 5/2012 reappraise the record of the proceedings held by the Training Review Board and take note of the reports submitted by the Chief Flying Instructor, Chief Ground Instructor, Training Co-ordination Officer, Senior Instructor (Outdoor Training) and the Chief Instructor (Flying) and thereafter decide on the penalty to be imposed. Keeping in view the penalty which is imposed at the remanded stage further action as per law would be taken.

20. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 19, 2016
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