
(2019) 02 DEL CK 0357

In the Delhi High Court

Case No : Civil Writ Petition No. 4306 Of 2017

Ex Flight Cadet Mohit Bhandari

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Citation : (2019) 3 AD(Delhi) 192

Hon'ble Judges : G.S. Sistani, J; Jyoti Singh, J

Bench : Division Bench

Advocate : Murari Tiwari, Rahul Kumar, Sahej Uban, Kirtiman Singh, Shruti Dutt, Waize Ali Noor

Final Decision : Dismissed

Judgement

Jyoti Singh, J

1. The instant writ petition assails the order dated 20.12.2016 passed by the respondent by which the petitioner has been terminated from his cadetship on the ground of misconduct, arising on account of having stolen a debit card from the personal bag of another Flight Cadet and withdrawing Rs.5,000/- from his account through ATM located at the Cadet Mess. The petitioner has prayed, inter-alia, for quashing the speaking order dated 20.12.2016 as well as directing the respondents to reinstate the petitioner and permit him to resume his training from the stage he had been terminated, with consequential benefits.

2. A few background facts necessary to adjudicate the present petition are that the petitioner is an alumnus of Sainik School and claims to having been a bright, meritorious and hard working student. After completing his 10+2 (intermediate), he joined the NDA and after successfully completing training therein, joined Air Force Academy, Hyderabad on 01.07.2013. Between 15.07.2013 and 20.07.2013, the petitioner successfully completed Air Crew Course.

3. Flight Cadet Shubhojeet Roy was a close friend of the petitioner, while they were undergoing training together at the NDA. On 24.09.2013 the petitioner

found an ATM Card along with the pin number, belonging to Flight Cadet Shubhojeet Roy in the changing room. He used the ATM Card and withdrew Rs.5,000/- from the ATM. When Flight Cadet Shubhojeet Roy learnt that money had been withdrawn from his account by someone, he complained to the Instructor about the incident.

4. Looking at the seriousness of the matter, the respondents ordered an investigation into the matter under Air Force Act and Rules and CCTV footage of the ATM centre was also obtained. On 27.09.2013, the petitioner confessed in writing that he had stolen the debit card of his fellow Flight Cadet and had withdrawn Rs.5,000/-, after he realized that the CCTV footage would reveal his action. In view of this confession, Para 14 of the AFO-05/2012 was invoked and Training Review Board (TRB) proceedings were initiated.

5. The TRB recommended termination of his training and this was approved by the competent authority i.e. Air Officer-in-charge (Personnel) at Air Headquarters.

6. On 27.11.2013, a letter was addressed to the father of the petitioner that the training of the petitioner was terminated.

7. The petitioner challenged the termination of his training by way of a writ petition bearing W.P.(C) No.2772/2014 in this Court. Division Bench of this Court called for the records of the respondents. Files showed that the Chief Flying Instructor under whom the petitioner was undergoing training had been called upon to offer his comments and he had reported that there was nothing adverse against the petitioner and that petitioner had been undergoing his training and classes regularly. His general behavior was good. Similar comments were offered by the Training Coordination Officer and Senior Instructor (Outdoor Training). This court also looked into a letter written by the petitioner to the Chief of Air Staff on 01.12.2013 wherein the petitioner had confessed to what he had done, and realized his mistake. The letter stated that he was an alumnus of Sainik School and right from his childhood, his only dream was to join the Air Force. He pointed out that prior to the incident, both in School and NDA, there had never been any complaint against him and had an unblemished record. Division Bench also went through Air Force Order in question and noted down the various penalties that are provided for, depending on the gravity of misconduct. Court was of the view that, no doubt para 18 vests the power with the TRB to recommend termination of training, but there is a range of penalties which are listed and termination was only one of them. Court also noted and considered the stand of the respondents that theft was an act of serious indiscipline for a Cadet under training with the Armed Forces and, therefore, the petitioner deserved nothing less than termination of his training. Having gone through the facts of the case, the Court came to a conclusion that certain parameters had been overlooked, before taking the decision to terminate the training of the petitioner viz. reports of the Instructors in the hierarchy, indicating his general character, behavior, discipline and performance; not once in three years at NDA, anything adverse was noted; he had never been warned or cautioned. The Court

was of the view that looking at the totality of the facts and the background of the petitioner, this being a solitary wrong, warranted re-examination by the respondents. Accordingly, the petition was disposed of vide order dated 19.07.2016, setting aside the penalty of termination of training. The Court directed the Chief of Air Staff to reappraise the record of the proceedings held by the TRB and take further action, after considering the observations and directions in its judgment. Some relevant paras of the judgment are extracted below:

"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.

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."

8. Pursuant to the directions issued by the Court dated 19.07.2016, the respondents passed a speaking order dated 20.12.2016. Operative portion of the said order is extracted herein:

"NOW, THEREFORE, the undersigned, keeping in mind the directions of the Hon'ble Delhi High Court, having taken into consideration entire circumstances of the case, the Ex-Flt Cdt's overall performance in other facets of training, his past record and relevant provisions of AFO 05/2012 decided that, the termination of cadetship as approved by the competent authority was just and proper and the training of the Ex-Flt Cdt Mohit Bhandari (175794-K be terminated." Aggrieved by this order, the petitioner has filed the present petition.

9. Learned counsel for the petitioner contends that the speaking order dated 20.12.2016 is illegal and arbitrary inasmuch as the order clearly shows that the directions and observations passed by this court in the earlier decision dated 19.07.2016 have not been taken into account. He submits that the Division Bench had clearly noted that only because the offence of theft was a serious one, that itself was not enough to penalize the petitioner with an extreme penalty of termination of training and the Court had, therefore, remanded the matter for considering various other factors, such as background of the petitioner, report of his instructors, his overall performance in the training etc. He further contends that in passing the impugned speaking order, the respondents have merely gone by the offence itself and thus the purpose of remand has been defeated. Learned counsel also argued that even in case of serious acts of indiscipline Air Force order mandates that the respondents must consider the overall performance of Flight Cadet as well as previous history and there is a range of punishments which are provided besides the extreme penalty of termination of training. Learned counsel has also argued that it is a fact and also a matter of record that the performance of the petitioner during the training was satisfactory and all his Instructors have given a satisfactory report. He also points out that there had been nothing adverse against him either in his professional training or his conduct.

He has been a bright student right from his school days and there was nothing adverse against him in his training at the NDA. The submission is that no doubt the petitioner had stolen the ATM Card, but there was no intent or motive to commit an offence and the petitioner is not a person with a criminal propensity. He submits that this was a stand alone aberration in his life and the punishment of termination has shattered his childhood dream of becoming an Air Force Pilot.

10. Per contra, learned counsel for the respondent has vehemently opposed the petition. It is submitted that the act of the petitioner in having stolen ATM card of a cadet in Air Force Academy is a very serious act of indiscipline and Air Force Order No.5/2012 also categorizes it in the list of serious acts of indiscipline. He further argued that this is also a pointer to the fact that the petitioner lacks officer like qualities and has attitudinal deficiency. He also lacks moral courage inasmuch as after having committed the act of theft, he did not own up the same and it was only when he realized that the complaint had been lodged and the CCTV footage would perhaps reveal his involvement, that he confessed to the act of stealing the ATM card.

11. Learned counsel further contended that honesty and integrity are considered as hall marks of Defence Forces. These virtues become particularly vital in the Armed Forces where great emphasis is placed on faith, trust and camaraderie between its trainees or officers. It is pointed out that even three years of training at the NDA, where the basic ethos of honesty and integrity are engrained in each cadet, has not impacted the petitioner and it only goes to show that he would never acquire Officer Like Quality (OLQ) and is, therefore, unfit to be an officer with Armed Forces. The argument is that trust, faith, honesty and integrity are essential qualities in the Armed Forces and dilution of these will be detrimental to the foundation of Armed Forces. Thus, continuing the petitioner, who is guilty of the act of theft, will be against the high values and tradition of the Indian Air Force. It is also submitted that if the petitioner could not resist temptation for a small monetary gain, it would be dangerous to commission him in the Indian Air Force and entrust him with flying Air Crafts and confidential information relating to security of the Nation. Learned counsel for the respondent contended that the observations as well as the directions of this court have been taken into account. The respondents had constituted a Board of Officers and the reports rendered by the various Instructors of the petitioner as well as his previous conduct and performance were taken due notice of, and only after carefully analyzing them, the final decision was taken by the Competent Authority to terminate the petitioner.

12. We have heard the learned counsels for the parties and also perused the pleadings. To satisfy ourselves, we have seen the original file of the respondents in which the decision was taken by them.

13. In view of the main plank of the argument of the learned counsel for the petitioner being that the Court had laid down parameters and guidelines for the respondents to re-examine the matter, but respondents have, in total defiance of

the said directions, again imposed the penalty of termination of training and have therefore ignored the judgment and have not reviewed the penalty of termination, we had asked for production of the original file. We have gone through the original file in which the case of the petitioner was processed and we have also gone through the proceedings of the Board of the Officers who have reviewed the earlier proceedings of the TRB. A perusal of the file shows that after the matter was remanded back by this court, Board of the Officers, was constituted by the respondents to reassess the earlier TRB proceedings. The terms of reference were to reassess the proceedings conducted in October, 2013 taking into consideration the performance of the petitioner, as reflected by the reports rendered by various Instructors, as well as his past disciplinary record and his school background.

14. We find that before coming to a final decision the Board of the Officers had infact looked into the remarks of the Chief Flying Instructor, Chief Ground Instructor, Training Coordination Officer, Senior Instructor (outdoor training) and Chief Instruction (flying). They have also looked into the circumstances leading to the commission of the theft as well as his previous history. It is only after a detailed analysis based on these parameters that the Board of Officers gave an opinion for termination of the training. Various provisions of the Air Force Order have also been analysed, as reflected in the proceedings. Therefore, the contention of the petitioner that the directions of the Court have been ignored is not borne out from the official record and is, thus, rejected. The Court had only directed the respondents to look into certain parameters and take a decision afresh. The ultimate decision was left to the respondents and there was no direction in the said judgment to impose an alternative penalty to that of termination of training.

15. As regards the contention that the AFO 05/2012 provides for penalties other than termination of training and therefore there was every discretion available to the respondents to impose a lesser penalty, we find that the Board of Officers have carefully analysed the provisions of the Air Force Order 05/2012. The Board has observed that the AFO listed out various acts of indiscipline/misdemeanour, likely to be committed by the Flight Cadets, during the training period, and prescribed a wide range of punishments depending on severity of the acts of indiscipline and the number of times, it is repeated. It also took into account that Air Force Order provides for consideration of past conduct and performance in other activities while awarding a punishment. Having analysed the provisions, the Board reached a conclusion that in cases of offences or acts of indiscipline like theft/fraud which are serious acts of misconduct and depict lack of officer like quality, termination of training is ordinarily the norm. What has weighed is the fact that honesty and integrity are hall-mark of Armed Forces. The Flight Cadet during the training period are tested not only for their professional competence but also for their integrity and honesty and an act of theft is an indication of their moral fibre and such cadets cannot be considered suitable to be commissioned in the Forces.

16. We have gone through the provisions of AFO 05/2012. The acts of delinquency of flight cadets can be broadly categorized into four categories :

(a) Minor aberration due to maladjustment, Minor misdemeanours. For these, para 8 provides minor penalties.

(b) Major acts of indiscipline but not involving lack of Officer Like Quality. For this mild to moderate range of punishments are prescribed in paras 12 and 13.

(c) A higher degree of indiscipline, but the cadet possess basic Officer Like Quality.

For this, punishments like deferment of Commission and Reflighting are provided.

(d) For acts which constitute gross indiscipline or lack of Officer Like Quality or attitudinal deficiency, termination of training is recommended.

17. The acts of theft/fraud/forgery have been classified in para 9 (d) of the AFO and come under the heading "serious indiscipline". Para 12 of the AFO provides corrective measures for "serious indiscipline" and also lays down the procedure for investigation etc when such an act is alleged to be committed. Para 18 provides the Competent Authorities and the Penalties that can be imposed by them. Para 18 (d) gives the power to Commandant/AOC/Station Commander to order a TRB and award or recommend any of the punishments enumerated therein. Recommendation of termination of training is one of the punishments provided. Significantly para 23 lays down the guidelines for the TRB. 23 (d) mandates the TRB to consider the past conduct of the cadet, earlier warnings etc. before making recommendations. Most relevant provision to the present case is para 23(3)(e). This provision stipulates that a flight cadet should be considered for deferment of Commission and Reflighting only if he/she possesses basic officer like quality. In all other cases it provides that termination of training may be recommended. Para 23(3)(f) further reiterates that all cases of gross indiscipline/lack of OLQ should normally be recommended for termination of training. Para 24 also provides the recommendation that can be given by the TRB and that the scale of punishment provided should be based on the gravity of the act. Para 24 (d) includes the punishment of termination of training.

18. Therefore, a careful analysis of AFO shows that acts like theft/fraud/forgery are considered as highest level of indiscipline and since these are indicators of lack of OLQ, penalty of termination of training is provided for. The respondents have acted as per the provision of the Air Force Order and after considering overall facts and circumstances, have awarded termination of training, and in our view, rightly so.

19. The contention of the learned counsel for respondents that honesty and integrity are the hall mark of the military profession is not without basis. When a cadet joins training there are two facets which are important and are necessary for making an officer. The first is the professional competence which includes academics, outdoor activities sports etc. However, the second and equally

important aspect, is that he must possess Officer Like Quality, as ultimately, after Commissioning as an officer, he would be privy to a lot of sensitive and confidential information relating to security of the Nation. This facet becomes more important in the case of the petitioner as he was undergoing training in the Air Force Academy and was to be commissioned as a pilot in the Indian Air Force. It needs no emphasis that being a pilot he would be entrusted with flying Air Crafts, would have access to sensitive data relating to Air Force stations, equipments etc. and therefore, virtues like honesty and integrity become extremely important.

20. The argument of the learned counsel for the petitioner that there was nothing adverse against him, either during his tenure in Sainik School or the NDA Academy and this was a standalone aberration, is though appealing at the first blush, but cannot be a ground to condone the act of theft committed by him. While we would refrain from commenting on the conduct, it would be relevant to state that if at the slightest opportunity the petitioner had succumbed to stealing, the respondents are not wrong in arguing that he lacked Officer Like Quality. The contention of respondents that he did not even own up the act of theft at the first instance which establishes lack of moral courage, is also justified. A Cadet to be recruited to the Armed Force must be worthy of confidence and should be a person of utmost rectitude, impeccable character and integrity. It is very important for a country to have a fighting Force comprising of morally upright, effective, righteous officers. They are expected to provide security to the Nation and its people and therefore, the training Academies have to ensure that ethical, upright and principled people find their way into the Forces. It is thus imperative that only those who are worthy of the confidence and trust are drawn into the Forces.

21. We also agree with the respondents that 3 years of training in NDA, where ethos of the Armed Forces are engrained into the cadet, also had no effect on the petitioner. Discipline and officer like quality are the heart and soul of any armed force personnel and any relaxation in the standard of discipline and integrity can prove disastrous for the Nation. Respondents are right that if the petitioner is given a lenient treatment, it would set a wrong precedent for future cadets and officers, which the Armed Forces can never afford.

22. The contention of learned counsel for the petitioner that the punishment of termination of training is highly disproportionate, is in our view, misplaced. Proportionality of punishment, is a jurisprudence in service law, which is applicable to disciplinary matters wherein an employee has put in several years of services and the question is one of balancing his service with the penalty. This jurisprudence in our view cannot be imported to a case of a trainee or a probationer. When a person is under training or is a probationer, who has to be confirmed, the concept that applies is of "suitability". Since this is a threshold stage, when the person has to be evaluated as suitable or unsuitable for the commission or confirmation respectively the question of proportionality cannot be

applied. As already pointed out above, the purpose of training in the academy of the Armed Forces is to judge the cadet as being suitable or otherwise to be commissioned in the Force. Character of a person is vital for adjudging his suitability for the job. Anne Frank has rightly summed up "character" in these lines:

"The final forming of a person's character lies in their own hands"

A starting point, therefore, during the training period would be to weed out those who may be professionally competent but show a propensity of misdemeanors. The respondents have the responsibility to prescribe high standards of rectitude and uprightness for people making their way into the uniformed Forces and thus their action of weeding out those who do not, in their wisdom, come up to the level of required standards cannot be faulted by us. It is also to be noticed that there are no allegations of any malice towards anyone either in the Academy or the members of the TRB. We are, thus, persuaded to uphold the action of the respondents, as we find no ground to take a contrary view.

While we are conscious that the present case does not relate to probation and confirmation but we can draw an analogy from the service jurisprudence applicable to the concept of confirmation. Just as in this case, the training period is to adjudge the suitability, during the period of probation, an employee is adjudged for confirmation. In several judgments, the Apex Court and this Court has held that it is always open to the employer to consider the entire record of the employee to determine whether he is suitable for confirmation or his services should be terminated. Apex Court in the case of *Hyderabad Municipal Corporation vs. M. Krishnaswami Mudliyar* 1985 (2) SCC 9 held that there is no right in an employee to be confirmed merely because he had completed the period of probation and passed the requisite tests. The very purpose of confirmation implies exercise of judgment by the confirming authority on overall suitability for permanent absorption in a service. Likewise in the present case, the purpose of specialized training in the Air Force Academy was to adjudge the professional competence of the petitioner as well as his overall suitability before he was commissioned as an officer in the Indian Air Force. At this stage, therefore, officer like qualities have to be adjudged and in a case like this, where a cadet lacks the basic OLQs the decision to terminate him cannot be termed as wrong.

23. The respondents had been directed by this Court to re-examine the proceedings of the initial TRB, under certain parameters laid down by the court. Having reassessed the TRB proceedings taking into account all parameters, the respondents in their wisdom have come to a conclusion that the petitioner lacks the basic OLQ and is not suitable to be commissioned. Needless to say, only the respondents have the expertise to decide as to who is suitable or not to be commissioned, and this court is not equipped to take such a decision on their behalf. It is a settled law that in a judicial review this Court can only interfere in the decision-making process and not substitute its own decision for the decision of the Government. Empathy and sympathy can have no place in matters of

discipline in the Forces. Having looked through the files, we find no fault with decision making process and therefore, we find no reason to interfere with the punishment imposed by the respondents.

24. The writ petition is accordingly dismissed and the order of termination is hereby upheld.

25. No order as to costs.