

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 5th day of January 2007

Original Application No. 278 of 1999

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Vikram Singh Mali, S/o Shri Sukh Ram, R/o Nakur Road
Changi Poorvi Afganana, Qasba Sarsawan, Distt:
Saharanpur.

. . . Applicant

By Adv: Sri A. Rajendra, Sri H.N. Sharma and
Sri N.S. Chahar

V E R S U S

1. The Union of India through Civil Aviation,
Government of India, New Delhi.
2. D.D. (Administration) Civil Aviation and Block-
5 R.K. Puram, New Delhi.
3. Assistant Director (Admn.), Aviation Research
Centre, Govt. of India, Sarsawan, Distt:
Saharanpur.
4. Inquiry Officer, Shri J.K. Jain, C/o Assistant
Director (Admn.) Aviation Research Centre,
Sarsawa, Distt: Saharanpur.

. . . Respondents

By Adv: Sri S. Singh

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The applicant who was working as a Mali at the
Civil Aviation Civil Station, Sarsawa was removed
from service by respondent No. 3 dated 01.01.1999.
He was chargesheeted vide memorandum dated
07.10.1998 on the following charges.

[Signature]

"Article No. I

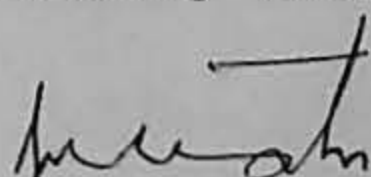
Sri Vikram Singh Mali, A.R.C. Sarsawa forcible snatched the salary of Rs. 3920/- of Shri Phool Singh, S/Wala at 1400 Hrs. on 31.8.1998 in front of the Estate Call.

Article No. II

Shri Vikram Singh, Mali, ARC, Sarsawa after forcibly snatching the salary of Shri Phool Singh, S/Wala from his hands, threatened to murder Shri Phool Singh, Safaiwala if he reported this matter to higher authorities."

2. IO and PO were appointed by the DA. Enquiry was conducted by the IO in the presence of the applicant and after conducting necessary enquiry the IO submitted a report to the DA that both charges against the applicant were proved. The enquiry report is dated 04.12.1998 (Annexure 13). Thereafter, the impugned order of removal from service was issued by the DA. The relief which has been sought by the applicant is for issuing an order quashing the impugned order dated 01.01.1999 and also directing the respondents to permit the applicant to work as Mali under respondent No. 3. The grounds on which the relief has been sought are the following:

- i. Reasonable opportunity was not provided to the applicant to produce defence witnesses during enquiry.
- ii. The applicant's request for approving the defence assistant of his choice Sri Dhanmesh Mali was turned down by the respondents.
- iii. The IO committed manifest error by failing to consider written communication given by Sri Phool Singh stating that a sum of Rs.



1500/- was taken by him as loan from the applicant and he had repaid the same and the applicant never extended any threat to his life.

iv. Sri Phool Singh had never lodged any FIR alleging that the applicant had snatched Rs. 3020/- from him.

v. The punishment order is arbitrary and excessive, highly disproportionate to the charge which are stated to have been proved.

vi. The matter was purely personal matter between the applicant and Sri Phool Singh and there was no ground to which the respondents could interfere.

3. The respondents have categorically denied the allegation made by the applicant that no such incident as contained in the charge sheet had ever happened. This was proved in an enquiry in which reasonable opportunity was given to the applicant to defend his case. The charges were proved on the evidence of other witnesses to the incident. The respondents have categorically denied that no opportunist was provided to the applicant for defending himself from the charges.

4. As to the allegation that the respondents did not allow the applicant to have a defence assistant of his choice, the respondents stated that the applicant was allowed to have another person as defence assistant. The respondents have the right

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to reject the request for a particular defence assistant. However, the right of the applicant to have a defence assistant was not rejected and he had indeed the service of one. The respondents also categorically denied that Sri Phool Singh had ever written to the respondents that no such incident had occurred. In fact it was the complaint of Sri Phool Singh upon which the enquiry and other actions were initiated.

5. We have gone through the pleading and heard the arguments. We do not disagree with the respondents that reasonable opportunity was provided to the applicant to defend himself. It is also true that the procedure as laid down in law were followed in conducting the enquiry. Therefore, on this ground the action of the respondent cannot be assailed.

7. However, what had drawn our attention in the OA is the allegation that the punishment was arbitrary and excessive compared to the offence. We are aware that the respondents and the DA have the discretion to choose the quantum of punishment. However, it is only in so far as such punishment is not so heavy as to shock the conscience of a rational mind. The applicant has stated that even if it was assumed for argument's sake that he was guilty of the charges, the punishment was too heavy. It has deprived him of his livelihood and the respondents did not think that he had a family to feed. They also did not

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take into consideration the fact that Sri Phool Singh had taken money from him which he had not returned. If the respondents felt that the charges were true, they should also have taken into account the provocative circumstances.

8. During the course of arguments the learned counsel for the applicant alleged that dismissal of the applicant from service was premeditated. The Disciplinary Authority was in search of an excuse to punish the applicant due to various reasons which, however, were extraneous to the present disciplinary case. When the applicant presented them the opportunity by snatching away money from Sri Phool Singh, they took the opportunity and gave him the maximum penalty permissible under the rules without considering whether this particular act of indiscipline deserves such a punishment. Somehow or the other the respondents wanted to get rid of the applicant in their organization and this explained why the punishment was so heavy.

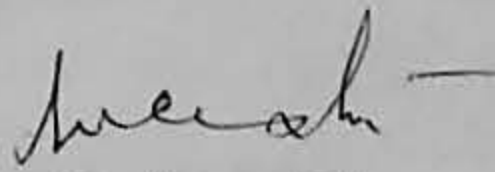
9. We have applied our mind to this matter. The respondents have stated that their organization belongs to the Ministry of Defence. They deal with sensitive matter relating to the security of the Country. Therefore, in their organization discipline was of utmost importance and such unruly behavior could not be countenanced. We do not

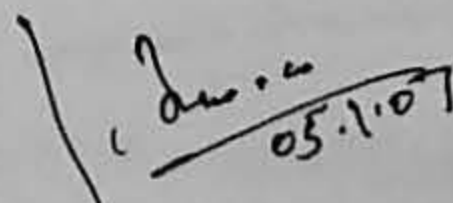
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disagree with this view. However, what we are worried about is that discipline should not become such an obsession as to obfuscate all other issues, even individual's right to livelihood. Obsession with discipline should not be allowed to reach such a limit that all other humanitarian considerations are sacrificed at its altar, and these may often escape on excessively regimented form of consciousness. It is true that the applicant deserves a punishment for his guilt. However, it should not be such as to throw him out of job leaving him at the street with his children. We are of the view that the punishment is shockingly disproportionate compared to the charges which have been proved.

10. For these reasons we set aside ^{the order of dismissal} and direct that the applicant be taken back in service. The respondents, however, would have the liberty to issue fresh orders of punishment which would however, not be one which would cause the applicant to ^{lose} ~~lose~~ his service with the respondent's organizations.

11. With these directions we dispose of this OA with no order as to cost.


Member (A)


Vice-Chairman

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 14th day of DECEMBER 2004.

Original Application no. 278 of 1999.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman
Hon'ble Mrs. Roli Srivastava, Administrative Member.

Vikram Singh Mali, S/o Sri Sukh Ram,
R/o Nakur Road Changi Poorvi Afganah,
Qasba Sarsawa, Distt. Saharanpur.

... Applicant

By Adv : Sri H.N. Sharma
Sri N.S. Chahar

V E R S U S

1. Union of India, Civil Aviation,
Govt. of India, New Delhi.
2. D.D.(Administration) Civil Aviation and Block 5
R.K. Puram, New Delhi.
3. Assistant Director (Admn.), Aviation Research Centre,
Govt. of India, Sarsawa, Distt. Saharanpur.
4. Inquiry Officer, Shri J.K. Jain,
C/o Assistant Director (Admn), Aviation Research Centre,
Sarsawa, Distt. Saharanpur.

... Respondents.

By Adv : Sri S. Singh

O R D E R

By Justice S.R. Singh, VC.

Heard Sri A. Rajendra brief holder of Sri N.S. Chahar
learned counsel for the applicant and Sri S. Singh, learned
counsel for the respondents and perused the pleadings as well as
the impugned order.

2. While working on the post of Mali ARC Sarsawa the
applicant served with the impugned charge memo under rule 14

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of the CCS (CCA) Rules 1968 containing the following charges:-

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Article I

Sri Vikram Singh, Mali, ARC, Sarsawa forcibly snatched the salary of Rs. 3020/- of Shri Phool Singh, Safaiwala at 1400hrs on 31.8.98 in front of the Estate Cell.

Article II

Shri Vikram Singh, Mali, ARC, Sarsawa after forcibly snatching the salary of Shri Phool Singh, Safaiwala from his hands, threatened to murder Shri Phool Singh, if he reported this matter to higher authorities."

The applicant submitted his reply to the charge memo vide letter dated 15.10.1998. The charge no. 1 was admitted while the charge no. 2 was denied by the applicant. Since the admission of charge contained in article 1 was not clear, proper enquiry was order and Shri J.K. Jain, SFO (ARC) Sarsawa was appointed as Enquiry Officer, to go into the charges framed against the applicant. By letter dated 13.11.1998 the applicant was asked to communicate the name of his defence assistant. In response to the said letter the applicant communicated the name of Sri Dharmesh Mali as his Defence Assistant. On conclusion of the enquiry, the Enquiry Officer submitted his report holding the applicant guilty of both the charges. The applicant was then furnished a copy of the enquiry report for making representation, if any, against the enquiry report. The applicant, it appears, did not make any representation.

3. The Disciplinary Authority having gone through the enquiry proceedings, enquiry report and other relevant records found that the enquiry was conducted in accordance with the relevant rules and the finding recorded by the Enquiry Officer were based on documents and valid materials. The Disciplinary Authority further found that the enquiry was conducted well in accordance with norms of natural justice. The Disciplinary

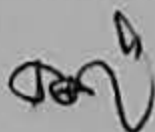
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Authority came to the conclusion that the applicant was guilty of both the charges framed against him and having regard to the gravity of the misconduct which amounted to an offence punishable under Section 392 and 506 of the IPC, held that the conduct of the applicant merited the most stringent punishment and accordingly by the impugned order dated 01.01.1999 imposed the penalty of removal from service with effect from the date of issue of the order. Aggrieved by the same the applicant has instituted this OA.

4. Having heard the learned counsel for the parties and upon regard being had to the facts and circumstances of the case we find no ground made out for interference. The findings are based on valid material on record and the enquiry proceedings were not vitiated in any manner what so ever. The applicant did not even submit his representation against the enquiry report. It is well settled that the Courts or Tribunal are not supposed to reassess the evidence considered and believed by the Disciplinary Authority. The interference is permissible on limited ground of the order being perverse or violative of principle of natural justice.

5. The learned counsel for the applicant then submitted that the penalty of removal from service as imposed by the Disciplinary Authority is disproportionate to the misconduct attributed to the applicant. It is also submitted by the learned counsel for the applicant that the complainant has himself filed a compromise vide letter annexed as annexure 14. In the counter affidavit receipt of the said letter has been denied and it has been alleged that the said letter is forged document. The letter annexed as annexure 14 is also undated and



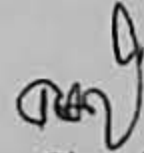
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it is not clear as to when and how was it given to the Competent Authority. However, in view of the submission made in para 19 of the counter affidavit that no such document was given either to the Enquiry Officer or the Disciplinary Authority, it is difficult for us to place any credence on the said document. The punishment of removal from service having regard to the gravity of misconduct cannot be termed as disproportionate to the misconduct. Therefore, no interference is warranted by this Tribunal.

6. Accordingly, the OA fails and dismissed.

7. There shall be no order as to costs.

Member-A


Vice-Chairman

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