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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 286/2004

....this the 23rd Day of November, 2007

**Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mr. Tarsem Lal, Member (A)**

Prem Bharti S/o Shri Madan Bhartiji, aged about 48 years, R/o Rai Ka Bagh, Old Police Line, Near Bakau Khan's Bungalow, Jodhpur (Raj.). Presently working on the post of Technician Gr. II, Wheel Mechanist, Shop No. 15, North Western Railway (Workshop), Jodhpur, Rajasthan.

...Applicant(s).

By advocate - Shri S.K. Malik.

VERSUS

1. Union of India through the General Manager, North Western Railway, Jaipur (Raj.).
2. Deputy Chief Mechanical Engineer, North Western Railway (Workshop), Jodhpur (Raj.)
3. Work Manager (Workshop), North Western Railway (Workshop), Jodhpur (Raj.).

... Respondent(s).

By advocate - Shri Salil Trivedi.

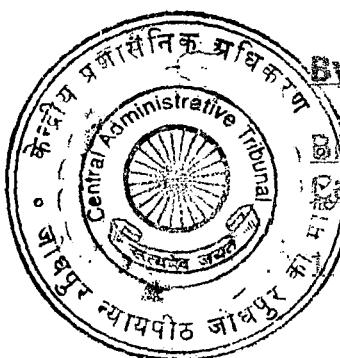
ORDER

By Justice A.K. Yog, Member (J)

BRIEF-FACTUAL MATRIX-

Role of the Applicant-

1. The applicant, Prem Bharti, was working in the Department of North Western Railway (Workshop) on the post of Technician Grade-I, Wheel Mechanist, Shop No. 15. He was charge-sheeted on the ground that on October 22, 2002 he had committed an act of indiscipline / misconduct by slapping his superior Dinesh Chandra Sharma, the then Incharge of Shop in question. The charge-sheet dated 29.10.2002 is annexed



as part of annexure A/2 to the O.A. (particularly at page 17).

In the said charge-sheet dated 29.10.2002, the charge framed was that 'without entering into any conversation, he slapped Dinesh Chandra Sharma' in presence of certain other employees.

2. Admittedly, inquiry was held. Enquiry Officer submitted his report after considering statements of the witnesses recorded during his inquiry. The Enquiry Officer concluded that no one had seen the applicant, Prem Bharti, slapping Dinesh Chandra Sharma but further held that Shri Prem Bharti, reached upto the chair of Dinesh Chandra Sharma and indulge in altercation (Hatapai). Even though said D.C. Sharma remain standing near his chair.

3. The Disciplinary Authority passed following order dated September 02, 2003, Annexure A/1 to the O.A. -

"After going through the charges, initial statements of witnesses, enquiry proceedings and finding of E.O. it is observed that there is not only variance of statements but also contradictions among witnesses recorded during enquiry. Quite convincingly from narrated statements and facts during enquiry it is not difficult to discern that the hearts had been far from lips & pens and lacks ethical passion. It is convincingly clear and also I do agree with the finding of enquiry officer that Shri Prem Bharti T. No. 9409/15 manhandled (hatapai) his shop Incharge Sh. D.C. Sharma in his office and this find him guilty for violation of rule 3 (1) (ii) & (iii). The employee also did not prefer any appeal against the notice given to him vide P.S. 10037. I therefore consider it not only as height of indiscipline on his part but also as a candid example of diluted moral. In a public service there is a serious need to enforce and maintain the system of disciplined working in order to stop propagation of sense of despair amongst employees in general and as such punishment of reduction of pay of Shri Prem Bharti, T.No. 9409/15 to the bottom of the time scale next

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below his present time scale for a period of five years with cumulative effect is awarded."

4. Being aggrieved, the applicant filed appeal under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968 (Annexure A/5 to the O.A.). In the said appeal, applicant raised various contentions including the plea that he has been punished on a finding/charge which was not part of the charge-sheet served upon him and consequently he was given no opportunity to defend himself against the said charge. Reference may be made to para viii and x of the said appeal / annexure A/5. The applicant alleges that while his aforesaid appeal was pending some assurance was given that in case applicant tenders apology then question of extending pardon shall be considered by the Department and on that basis, according to the applicant, he filed an application dated 15.05.2004 (Annexure A/6 to the O.A.). In the said application dated 15.05.2004, the applicant has referred to his grievance that in spite of accepting his fault and asking for pardon, his afore-mentioned appeal has not been decided and he is being misled. The applicant further sought opportunity of personal hearing.



5. No action was not taken in the matter - he filed present O.A. No. 286/2004 with the relief to quash order of punishment / Annexure A/1 to the O.A.) and also general relief praying for quashing of any order adverse to him including dismissal of appeal, if any.

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6. The present O.A. has been filed by the applicant primarily on the ground that appellate order, impugned by way of amendment, is a non-speaking order perverse against record and, reciting facts against record. It is contended that charge levelled was specific that there was no conversation or altercation before applicant had allegedly slapped D.C. Sharma and Enquiry Officer had proceeded to record evidence on the basis of said charge only. According to the applicant, the department / disciplinary authority could not travelled beyond the charge framed and any evidence or finding recorded by Enquiry Officer / Disciplinary Authority which is beyond the scope of said charge and cannot be looked into or utilized for awarding punishment.

7. Learned counsel for the applicant has also relied upon the case of ***State of Haryana vs. Om Prakash, Constable*** reported in (1990) 14 ATC 823 and other case of ***Deva Ram vs. Union of India & Ors.*** (O.A. No. 261/2003) decided on 01.10.2004 by this Bench of the Tribunal.



CASE OF THE RESPONDENTS:

8. Respondents filed reply to the O.A. annexing copy of letter dated 07.10.2003. The said purports to have been written by the applicant tendering 'apology' and asking for 'pardon'. In para 6 of their counter-affidavit / reply (filed against unamended O.A.), the respondents disclosed that appeal filed by the applicant stood rejected vide order dated 10.06.2005, a copy of said order was also enclosed as Annexure R-2 to

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the said reply. Taking clue from the facts disclosed by the Respondents, the applicant filed M.A. No. 89/2007 praying for requisite 'amendments' to incorporate facts/pleading, ground and a relief required to assail order dated 10.06.2005 passed by Appellate Authority – dismissing the Departmental Appeal. Amendment Application (M.A. No. 89/2007) was, after contest, allowed vide Tribunal order dated 06.07.2007 (Read with order dated 11.05.2007). The applicant amended the O.A. under Court order but, as it appears, inadvertently and as a bonafide human err missed to incorporate 'proposed para 4.9' in the amended O.A.

9. Shri Salil Trivedi, learned counsel for the Respondents submits that – the Applicant has failed to plead necessary facts (by omitting to incorporate 'proposed para 4.9' in Amended O.A.) and also that copy of Appellate order dated 10.06.2005 (Annex. R-2 to the Reply of the Respondents) has not been annexed with the O.A. - though there is mandatory – statutory requirement as per R. 9 (1) (i), Central Administrative Tribunal (Procedure) Rules, 1987; for convenience R. 9 (1) referred to above reads:

"9. Documents to accompany the application. - (1) Every application shall be accompanied by [the following documents]: -

- (i) an attested true copy of the order against which the application is filed;**
- (ii) copies of the documents relied upon by the applicant and referred to in the application;**
- (iii) An index of the documents."**

10. Copy of the order dated 10.06.2005 dismissing 'Departmental – Appeal' is on record, though filed by the ^{10/10}



Respondents as annexure R/2 to their reply dated 13.07.2005.

11. Salient facts including charge-sheet, material/evidence relied upon by the Enquiry Officer / Disciplinary Authority / Appellate Authority in the instant case - as also disclosed in the O.A., have not been rebutted in the reply of the Respondents who have, in their reply, endeavoured to justify the impugned action / order/s on legal premise.

12. Heard learned counsel for the parties at length and perused the record.

Preliminary Objection/s of the Respondents:

13. Preliminary objections regarding non-filing of the impugned order dated 10.06.2005 / Annex. R-2 to the Reply of Respondents - (dismissing departmental appeal) along with original O.A., raised by the learned counsel for the respondents heavily relying upon Rule 9 (1) (i), Central Administrative Tribunal (Procedure) Rules, 1987 (quoted above), though looks attractive at a flash but it has no substance otherwise.



14. We are unable to allow the objection in the facts of this case on decline to and dismiss the O.A. at this stage.

15. Procedural rules are handmade to further the cause of justice and to avoid arbitrary procedure and consequential law.

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~~disability making it difficult or impossible for an~~
~~delay if enabling~~ Court/Tribunal to hear and decide 'List' before it in an effective and judicious manner.

16. In the facts of the O.A., we find that impugned order has been brought on record by the respondents, being fully alive of the fact that said appellate order dated 10.06.2005 which the Applicant could not file – as it was not made available to him, was under challenge. Annexing of the appellate order dated 10.06.2005 with the O.A., was only a formality since the appellate order was already brought on record by the respondents themselves. No prejudice is being caused to the respondents nor the Respondents have even attempted to place or argue before us. Such an objection is, in the above circumstances, is self-serving with no consequence. It will not be fair or in the interest of justice to dismiss the O.A. at this stage. Even if we agree with the contention / objection raised on behalf of the respondents on this score; hearing of O.A. is to be deferred to enable the Applicant to annex said order with OA, which will mean deferring final disposal of the O.A. for no benefit / advantage to anyone since said order is now already on record. The purpose of rule (quoted above) is ultimately nothing but to have the impugned order on record. The purpose and object being fully satisfied, we refuse to dismiss the O.A. on that ground at this stage particularly when the case has already been finally heard at length.



17. The other objections regarding non-incorporation of ^{by}
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proposed para 4.9 as mentioned in the amendment application vide M.A. No. 89/2007 (referred to above), we have already mentioned that it has been due to inadvertence on the part of the learned counsel / his office - representing the Applicant. It is well settled principle that no party should suffer because of the fault of the Court / counsel and that too when 'mistake in question' is bonafide with no advantage derived by the applicant as against the Respondents.

18. Accordingly, we are satisfied that learned counsel for the applicant had inadvertently missed it. Hence, we allow him, to incorporate 'proposed para 4.9' in the O.A. today during course of the day. No prejudice is caused to the respondents in any manner particularly when other proposed paragraphs relating to additional ground and relief by way of amendment has already been incorporated in the amended O.A.

DISCUSSION & CONCLUSION:

19. On behalf of the applicant, as noted earlier, it is being argued that impugned order dated 02.09.2003 (annexure A/1 to the O.A) passed by the Disciplinary Authority and the Appellate Order dismissing the appeal dated 10.06.2005 (Annexure R/2) cannot be sustained as for two simple reasons - (i) 'punishment awarded' is beyond 'specific charge' levelled in the charge-sheet, and (ii) none of the impugned order contain reasons and hence - non-speaking orders - showing non-application of mind.

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20. Learned counsel for the respondents did make an attempt to justify the said order by showing other relevant documents and circumstances. However, the orders passed cannot be sustained by supporting material or circumstances. The order itself should show that authority in question had applied its mind and reasons for coming to the certain conclusion. As far as the order of Disciplinary Authority dated 02.09.2003 (annexure A/1 to the O.A) is concerned, we refrain to make comment as we are of the opinion that let the 'Appeal' be considered by the Appellate Authority, who has the advantage of having entire original record before it, considering the plea/s raised in the appeal.

21. We have considered the said arguments and find that the impugned appellate order dated 10.06.2005 is per-se 'non-speaking order'. There is nothing to show that there has been application of mind as required under law. There is nothing to show that the plea/s raised in the 'memorandum of appeal' were at all considered, and if considered, for what reasons they have not been accepted and rejected. Such an 'order' is in blatant breach of principles of 'Natural Justice', and 'non-est', since vitiated in law - liable to be quashed.



22. Learned counsel for the applicant, however, strongly contends that once appellate order is being set aside this Court should also set aside the impugned order of punishment passed by the Disciplinary Authority (Annexure A/1 to the O.A.) and the Tribunal may decide entire case, by itself.

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23. We are, unable to accept the above contention. We are, however, of the view that the Tribunal should avoid to take upon itself to appreciate the evidence and record its own findings. Let the appellate authority consider the grievance of the petitioner in the light of material/evidence on record and the grounds taken in appeal and pass 'speaking order' in accordance with law. There are special or extraordinary circumstances which may warrant deviation from normal course / procedure that once an 'order' is set aside the matter

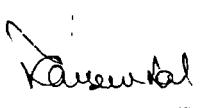
*as upon by the Learned Counsel for Applicant, are distinguished an
and of no help. An* ^{an} *Citations relied* ^{an} *on*
ORDER

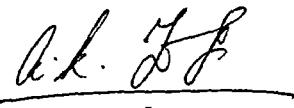
24. In the result, the impugned appellate order dated 10.06.2005 (annexure R/2 to the O.A.) is set aside. The Appellate Authority / respondents is hereby require to decide the matter afresh in accordance with law within two months from today. Shri Salil Trivedi, advocate, appearing on behalf of the respondents undertakes to communicate this order within two weeks from today.



25. Original Application is partly allowed to the extent indicated above.

26. In the facts and circumstances of the case, we make no order as to costs. ^{an}


(Tarsem Lal)
Member (A)


(A.K. Yog)
Member (J)

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Sign

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Sign

S. K. Malile

Adv

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