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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.268/2005

Date of decision: 2-3-2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Hon'ble Mr. V.K. Kapoor, Administrative Member.

Chandra, S/o Shri Kikhma Ram ji, aged about 52 years, resident of Village Khudra District, Churu (Raj) at present working/employed on the post of Track Man in Gang 8 under PWI, Churu, North West Railway, Churu (Rajasthan).

: applicant.

Rep. By Mr. J.K. Mishra, : Counsel for the applicant.

Versus



1. Union of India through General Manager, North West Railway, Jaipur (Raj).
2. The Assistant Divisional Engineer, North West Railway, Ratangarh, Bikaner Division, District Churu (Raj).
3. The Divisional Engineer, North West Railway, Bikaner Division, Bikaner (Raj).

: Respondents.

Rep. By Mr. Manoj Bhandari : Counsel for the respondents.

ORDER

Per Mr. Justice S.M. M. Alam, Judicial Member.

Applicant Chandra, who is presently working on the post of Trackman in Gang 8 under PWI Churu, North west Railway, Churu (Rajasthan) has preferred this O.A. seeking the following reliefs:

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- " I) That by an appropriate writ, directions, the impugned orders filed vide Annex. A/1 and A/2 dated 12.07.2004 and 13.07.2005 may kindly be quashed and set aside with all consequential benefits.
- (II) That any other order(s) or direction may be passed in favour of the applicant which may be deemed just and proper
- (III) Cost of the original application.

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2. The brief facts of the case are as follows:

The applicant is a railway employee working as Trackman in Gang 8 at Churu. He was served with a charge memo bearing No. E-5/Ratangarh/DAR/Chandra dated 15.06.2002 issued by respondent No. 2. The said charge memo has been annexed with the application as Annex. A/3. He was charge sheeted for the allegation that on 11.04.2002, between 13.30-14.00 hrs he along with his companion left headquarters and reached KM 290 (beat relating to Gang 9) and there he abused and assaulted Shri R.K. Gupta, Junior Engineer (PW) and thereby created obstacle in maintaining the safety of rail. It is also alleged in charge memo that due to the illegal act of the applicant Rule 3-1 (ii) (iii) Railway Servants (Conduct) Rules, 1966 was violated.

The applicant submitted an application on 3.7.2002 (Annex. A/4) for supplying copies of certain documents on the basis of which charges were framed against him along with the statements of the prosecution witness named in the charge sheet. Thereafter, Mr. J.R. Meena was appointed as inquiry officer vide Standard Form No. 7 dated 30.07.2002 (Annex. A/5). The applicant states that annex. A/5, nominating Shri Meena as Inquiry Officer was issued even before he submitted his statement of defence. It has been stated that it is settled law that the issuance of S.F.7 nominating inquiry officer before obtaining the statement of charged official is illegal and against principles of natural justice. On 18.10.2002 vide Annex. A/6, the inquiry officer issued a letter asking the applicant to appear in the inquiry on 13.11.2002 along with his defence counsel and with his defence statement. The next date was fixed on 03.05.2003 and 24.05.2003 for hearing. It is further stated that the inquiry officer did

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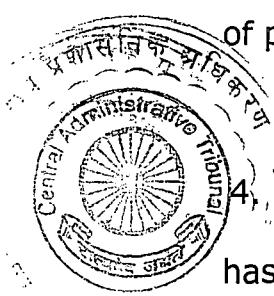
not follow the proper procedure of inquiry and did not ask any question from the applicant as to whether he accepts the charge or not. Instead the inquiry officer straightaway recorded the statement of witnesses and submitted his inquiry report. On the basis of the inquiry report, the disciplinary authority imposed penalty of reduction of pay of the applicant from Rs. 3410/- to Rs. 2610 for a period of three years. The applicant preferred an appeal before the respondent No. 3 on the ground that the respondent No. 2 has admitted in the order that the charge of abusing and assaulting to Shri R.K. Gupta has not been proved rather the incident of speaking in loud voice was proved. However, the Disciplinary Authority has held the applicant guilty and passed the order of punishment. In appeal filed by the applicant, the Appellate Authority did not accept the plea of the applicant and confirmed the finding of the inquiry officer with modification in the order of the punishment by reducing period of reduction of pay of the applicant from a period of three years to 1 1/2 years. The applicant has challenged both the orders which are Annex. A/1 and A/2 respectively.

3. On filing of the O.A, notices were issued to the respondents and in response to the notices respondents appeared through their advocate and filed reply. In the reply, the respondents have contended that the applicant was charge sheeted for misbehaving, manhandling and abusing Shri R.K. Gupta which amounted to misconduct under Railway Servants (Conduct) Rules, 1966 and therefore Standard Form No. 5, was rightly served upon him and disciplinary proceeding was started against him in accordance with the

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Rule. It has further been stated that the applicant participated in the inquiry and during the inquiry, the inquiry officer recorded the statement of several witnesses and after completion of the inquiry, the report was submitted and on that basis the disciplinary authority after giving full consideration rightly imposed the minor penalty of reduction of pay of the applicant for a period of three years. It has further been contended that the appellate authority after giving full consideration on the inquiry report and the order of the disciplinary authority and also after considering the representation of the applicant confirmed the punishment. However, the appellate authority had reduced the period of penalty from three years to 1 1/2 years.



4. During the course of hearing learned advocate of the applicant has submitted that it is a case of no evidence as the inquiry officer in his report has arrived at the findings that the allegation of manhandling and using of abusive language by the applicant against Shri R. K. Gupta was not established but the allegation of speaking loudly was established. He further submitted that the above finding of the inquiry officer establishes that the charge levelled against the applicant was not proved and as such the penalty awarded to the applicant on the basis of unproved charge cannot be sustained in the eye of law.

from A

5. On the other hand the argument of the learned counsel of the respondents is that a perusal of inquiry officer's report which has been annexed along with Annex. A/8 of the O.A will show that during the disciplinary proceedings, the applicant, at every stage, participated in

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the inquiry and also cross examined the witnesses which proves beyond doubt that the applicant was given full opportunity to defend himself and thus little scope is left for the applicant to challenge the inquiry officer's report. He submitted that the punishment awarded by the disciplinary authority as well as by the Appellate Authority is based on the findings of the inquiry officer. He submitted that since minor penalty has been awarded on the applicant after full and thorough inquiry, in which the applicant was afforded full opportunity to defend himself and as such in view of the decisions of Apex Court/High Courts, this Tribunal has no jurisdiction to interfere with the order of minor penalty. In this regard the learned counsel of the respondents have relied upon the following decisions :



(i) State Bank of India and ors vs. Ramesh Dinkar Punde [(2006)7 SCC 212]; **(ii) Ganesh Santa Ram Sirur vs. State Bank of India and anr.** [(2005) 1 SCC 13] **(iii) U.P.State Road Transport Corporation vs. Subhash Chandra Sharma and others.** [(2000) 3 SCC 324].

6. We have perused the above mentioned judgements. We would like to refer the relevant findings of the Apex court with regard to the power of the Tribunal/court to interfere with the finding of the inquiry officer in a Disciplinary proceeding and the punishment awarded by the Disciplinary/Appellate Authority on the basis of inquiry report. In **State Bank of India and ors vs. Ramesh Dinkar Punde (supra)** the Apex Court has held that it is impermissible for the High court to re-appreciate the evidence which had been considered by the inquiry officer, Disciplinary Authority and Appellate Authority. In the case of

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Ganesh Santa Ram Sirur vs. State Bank of India and anr. (Supra), it has been held by the Apex court that in view of the magnitude of seriousness and gravity of the said proved charge, taking into consideration the unproved charge of lesser seriousness and gravity is inconsequential. In the case of **U.P. State Road Transport Corporation vs. Subhash Chandra Sharma and others.** (supra) while discussing the power of Labour court to interfere with the punishment awarded to a delinquent employee the Apex court had held at para 9 as under:

“ 9. The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellate removing the respondent from the service. The charge against the respondent was that he, in a drunken state, along with the Conductor went to the Assistant Cashier in the cash room of the appellate and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of the respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way “shockingly disproportionate” to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in a miscarriage of justice. ”



7. From decisions referred to above, it is clear that the power of the Tribunal to interfere with the findings of the inquiry officer in a disciplinary proceeding and the punishment awarded to the delinquent employee by the Disciplinary Authority as well as Appellate Authority is very limited. Not only that, re-appreciation of evidences given before the inquiry officer is not permissible.

8. On the other hand, it is settled law that if the findings of the inquiry officer is based on erroneous reading of the evidences or the

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material brought on record, then the said findings of the inquiry officer is perverse and on that basis no punishment can be awarded to a delinquent employee. In this regard we rely upon the following decisions: (i) **S.K. Giri vs Home Secretary, Ministry of Home Affairs and ors.** [JT 1995 (6)154]; (ii) **Subhash vs. The Divisional Controller, Maharashtra State Road Transport Corporation and Anr.** [2009 (6) SLR 41]; and also on the decision of the Hon'ble High Court of Madras in the case of **Management of Madurantakam Cooperative Sugar Mills Ltd. Vs. Presiding Officer II Additional Labour Court, Chennai and another** [2009 (6) SLR 43]. In all the above cases either the punishment was modified or the same was set aside. Thus we are of the view that this Tribunal is empowered to modify the punishment awarded if the circumstances of the case so warrants.



9. Analysing the present case on the basis of above decisions, we have to give our findings whether the conclusions arrived at by the inquiry officer is based on the material brought on record by way of examination of witnesses or whether the same is against material and the evidence available on record as a result of which the finding can be held to be perverse. First of all we would like to incorporate the charge levelled against the applicant which is at page 19 of the O.A.:

It is in Hindi. It is incorporated verbatim:

अनुच्छेद - ।

अनुबन्ध - ।

श्री चन्द्रा पुत्र श्री लिखमा राम द्वैक मैन गैग-८, छूरु ने दिनांक 11.4.02 को 13.30-14 बजे अपने कुछ साथी द्वैक मैन-८ के साथ मिलकर अपना मुख्यालय छोड़कर किमी 290 में १ गैग तं-९ की बीटूमें जाकर, श्री आर. के. गुप्ता क छाजि. परे पर छूरु के ताथ गाली-गलोच व मारपीट की जितसे रेल के सुरक्षा से सम्बन्धित कार्यों में बाधा आयी ।

अतः श्री चन्द्रा पुत्र श्री लिखमा राम द्वैक मैन गैग-८ छूरु ने रेल सेवा आचरण नियमन 1966 के पैरा 3-1 शुल्क शुल्क का उल्लंघन किया है ।

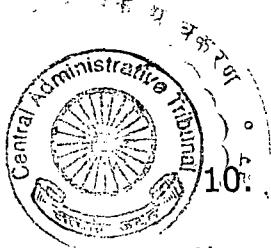
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सहायक मण्डल इंजीनियर
डॉ. रत्नगढ़

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The inquiry was conducted against the applicant on the basis of above mentioned charge. Let us see what is the finding of the inquiry officer with respect to the above charge. The inquiry report is annexed with Annex. A/8. The report is in Hindi and the concluding portion of the report at page 35 is quoted verbatim:

इस जांच के दौरान साथियों के बयानों व क्रोस Examination से गली - गलोच व मारपीट का आरोप सिद्ध नहीं होता है परन्तु इनके अपने कनिष्ठ अभियन्ता के साथ जैंधी आबाज में वाद - विवाद की घटना व अभद्र व्यवहार दर्शाता है । उपरोक्त दर्शायि गये आरोप जांचिक स्प से साक्षित होते हैं ।



सही /-
जांच अधिकारी

10. From the perusal of the report of the inquiry officer, especially the concluding portion of the report, it is well established that the charge levelled against the applicant that he abused and assaulted Shri R.K. Gupta, JE (Churu) was not established. The report further indicates that only thing which was established is that he talked with Shri R. K. Gupta in loud voice, for which the applicant had never been charge sheeted and the charge memo does not indicate this charge. The Disciplinary Authority, as well as the Appellate Authority, both have failed to consider this fact that the charge levelled against the applicant as per the charge memo does not stand proved.

11. In such view of the matter we have no alternative except to hold that the applicant has been penalized on the basis of a charge which was not proved during the departmental inquiry and the inquiry officer

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in his report categorically stated that the charge of manhandling, use of abusive language and assaulting R.K. Gupta did not stand proved.

12. Thus we hold that the inquiry report is based on no evidence and therefore the same is perverse and on that basis no penalty can be awarded.



13. In view of the above discussion, we hold that the O.A should be allowed and order dated 12.07.2004 (annex. A/1) i.e the Disciplinary Authority's order and order dated 13.07.2005 (annex. A/2,) the Appellate Authority's order are hereby quashed and set aside.

Accordingly, the O.A is allowed. The applicant is entitled to all consequential benefits. In the facts and circumstances of this case there will be no order as to costs.

V.K. Kapoor
[V.K. Kapoor]
Administrative Member

jsv

S.M.M. Alam
[Justice S.M.M. Alam]
Judicial Member.

R/C
5/3/2016

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लोधपुर नगरपाली
लोधपुर नगरपाली का अधिकारी
लोधपुर नगरपाली, जोधपुर