

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**ORIGINAL APPLICATION NO. 267/2005
&
ORIGINAL APPLICATION NO. 269/2005**

Date of Order: 1-2-2011

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

(1) OA No. 267/2005

Satpal Singh S/o Shri Durjan Singh Ji, aged about 35 years, resident of Shekawat Colony, Churu (Raj.), at present working / employed on the post of Track Man in Gang-8 under P.W.I., Churu, North-West Railway, Churu (Raj.).

...Applicant.

Mr. J.K. Mishra, counsel for 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.

Mr. Manoj Bhandari, assisted by Mr. Govind Suthar, counsel for respondents.

(2) OA No. 269/2005

Akbar Ali S/o Shri Inayat Ali, aged about 50 years, resident of Ward No. 28, Aguna Mohalla, Churu (Raj.), at present working / employed on the post of Track Man in Gang-8 under P.W.I., Churu, North-West Railway, Churu (Raj.).

...Applicant.

Mr. J.K. Mishra, counsel for applicant.

VERSUS

X/6

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.

Mr. Manoj Bhandari, assisted by Mr. Govind Suthar,
counsel for respondents.

ORDER

Both the above mentioned Original Applications, (OA No. 267/2005 & OA No. 269/2005) are being taken up together for disposal by this common order passed in O.A. No. 267/2005 as both the OAs are based on common facts and law.

2. In OA No. 267/2005 Satpal Singh, who is working as Trackman in Gang No. 8 under P.W.I., Churu, North-West Railway, Churu, is the applicant, whereas in OA No. 269/2005 Akbar Ali, who is also working as Trackman in Gang No. 8 under P.W.I. Churu, North-West Railway, Churu, is the applicant.

3. Both the Original Applications have been preferred seeking relief that by an appropriate writ, direction, the impugned orders vide Annexure A/1 and A/2 dated 12.07.2004 and 13.07.2005, respectively be quashed and set aside with all consequential benefits along with costs of the OAs.

4. The brief facts of both the Original Applications are as follows:

The applicants are railway employees working as Trackman in Gang No. 8 under P.W.I. at Churu in North-West Railway. The

respondent no. 2 issued charge memo dated 15.06.2002 (Annexure A/3) against the applicants alleging therein that on 11.04.2002, between 13.30-14.00 hrs., they along with their companion left headquarters and reached KMs 290 (beat relating to Gang-9) and there they abused and assaulted Shri R.K. Gupta, Junior Engineer (PW) and thereby created obstacle in maintaining the safety of rail. It was also alleged in the charge memo that due to the illegal act of the applicants, Rule 3-1 (ii) (iii) Railway Servants (Conduct) Rules, 1966 was violated. On receipt of charge memo, the applicant of OA No. 267/2005 submitted an application dated 03.07.2002 (Annex. A/4), and the applicant of OA No. 269/2005 submitted an application dated 24.07.2002 (Annex. A/4) for supplying them the copies of the certain documents, along with the statement of the prosecution witnesses named in the charge-sheet. One Shri J.R. Meena was appointed as Inquiry Officer vide Standard Form No. 7 dated 30.07.2002 (Annex. A/5). The applicants have stated that the appointment of Inquiry Officer was illegal and against the principle of natural justice. Thereafter, the Inquiry Officer issued letter dated 18.10.2002 asking the applicants to appear and participate in the inquiry on 13.11.2002 along with their defence counsel and with defence statements. The Inquiry Officer proceeded to enquiry into the matter and after completion of enquiry, he submitted the enquiry report. Then the disciplinary authority on the basis of enquiry report imposed penalty of reduction of pay of the applicants for a period of three years. The applicants preferred appeal before the respondent no. 3 but the appellate authority dismissed the appeals filed by the applicants and confirmed the

finding of the disciplinary authority with modification. Thereafter, the applicants preferred the above mentioned Original Applications challenging the orders of the disciplinary authority as well as the appellate authority.

5. On filing of the Original Applications, notices were issued to the respondents and in response to the notices; the respondents appeared through their advocate and filed reply. In the reply, the respondents have contended that the applicants were charge sheeted for misbehaving, manhandling and abusing Shri R.K. Gupta, which amounted to misconduct under the Railway Servants (Conduct) Rules, 1966, and, therefore, Standard Form No. 5 was rightly served upon the applicants, and disciplinary proceeding were started against them in accordance with the Rules. It has further been stated that both the applicants participated in the enquiry and during the enquiry, the Inquiry Officer recorded the statements of several witnesses and after completion of the enquiry, 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 applicants. 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 representations of the applicants, confirmed the punishment with modification, and so no interference is required in the orders under challenge.

6. During the course of the hearing, the learned advocate of the applicants submitted that both the Original Applications are

covered by the order passed by this Bench of the Tribunal dated 02.03.2010 in O.A. No. 268/2005 - Chandra vs. UOI & Ors. He submitted that O.A. No. 268/2005 was filed by one Chandra, who was also a Trackman in Gang No. 8 under PWI, Churu, North West Railway, Churu. The said Chandra was also charge-sheeted along with the present applicants of O.A. No. 267/2005 and O.A. No. 269/2005 for assaulting and misbehaving with Shri R.K. Gupta, Junior Engineer (PW), and on submission of enquiring report he was also imposed minor penalty of reduction of pay by the Disciplinary Authority. The learned advocate of the applicants submitted that the OA filed by Chandra, and the OAs. filed by these two applicants are based on similar facts and similar documents and as such similar order can be passed in both the present Original Applications.



The learned advocate appearing for the respondents also conceded that both the present Original Applications are fully covered under the order passed by this Bench of the Tribunal in O.A. No. 268/2005 (supra) filed by Chandra. We have perused the order passed in OA No. 268/2005 and we are also of the view that both the present Original Applications are covered under the order passed in O.A. No. 268/2005 and on the basis of similar facts and law no different order can be passed. However, before final conclusion, we would like to reproduce our findings recorded at para 9, 10, 11 & 12 of the order passed in the case of Chandra vs. UOI & Ors. (O.A. No. 268/2005), which reads thus:-

"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:

अनुबन्ध - 1

अनुच्छेद - 1

श्री चन्द्रा पुत्र श्री लिखमा राम टैक मैन गेंग-8, चूरु ने दिनांक 11.4.02 को 13.30-14 बजे अपने कुछ साथी टैक मैन गेंग-8 के साथ मिलकर अपना मुख्यालय छोड़कर किमी 290 में (गेंग सं. - 9 की बीट) में जाकर, श्री आर. के. गुप्ता क. इंजि. (र. प.) चूरु के साथ गाली-गलोच व मारपीट की जिससे रेल के सुरक्षा से सम्बन्धित कार्यों में बाधा आयी।

अतः श्री चन्द्रा पुत्र श्री लिखमा राम टैक मैन गेंग-8 चूरु ने रेल सेवा आचरण नियमन 1966 के पैरा 3-1 (ii) (iii) का उल्लंघन किया है।

सही/-15-6-
सहायक मण्डल इंजीनियर
उ.रे. रतनगढ़

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 कोस Examination से गाली-गलोच व मारपीट का आरोप सिद्ध नहीं होता है परन्तु इनके अपने कनिष्ठ अभियन्ता के साथ ऊँची आवाज में बाद - विवाद की घटना व अभद्र व्यवहार दर्शाता है। उपरोक्त दर्शाये गये आरोप आंशिक रूप से साबित 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 enquiry and the inquiry officer 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." 21

8. Since the penalty imposed against the applicants are based on similar findings of the inquiry officer which says that charge levelled against the applicants of abusing and assaulting Shri R.K. Gupta (JE) was not established, we are of the view that since under similar facts and circumstances, the O.A. No. 268/2005 (supra) filed by Chandra was allowed, as such both the present Original Applications should also be allowed. Accordingly, Original Application No. 267/2005 filed by Satpal Singh and Original Application No. 269/2005 filed by Akbar Ali are allowed, and the order dated 12.07.2004 (Annex. A/1) passed by the Disciplinary Authority and the order dated 13.07.2005 (Annex. A/2) passed by the Appellate Authority are hereby quashed and set aside. It is observed that both the applicants will be entitled to get all consequential benefits. However, in the facts and circumstances of the cases, there will be no order as to costs.

**COMPARED &
CHECKED**

9. Accordingly, both the Original Applications are disposed of.

Let a copy of this order be kept in O.A. No. 269/2005.

Sd/-
(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

Sd/-
(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

CERTIFIED TRUE COPY
Dated 02.02.11

nlk

nlk
नगराय विभागी (न्याय.)
Section Officer (Jud.)
केंद्रीय प्रशासनिक अदान्करप
Central Administrative Tribunal
जोधपुर न्यायालय, जोधपुर
Jodhpur Bench, Jodhpur.