

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

YV

**ORIGINAL APPLICATION NO. 18/2008**

**Date of Decision: 21-7-2010**

**CORAM:**

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER  
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

Prem Bharti S/o Shri Madan Bharti, aged about 50 years, R/o Rai Ka Bagh, Old Police Line, Near Bakshu Khan's Bungalow, Jodhpur (Rajasthan). Presently working on the post of Technician Grade II, Wheel Mechanist, Shop No.15, North Western Railway (Workshop), Jodhpur (Rajasthan).

**.... Applicant**

**For Applicant : Mr. S.K. Malik, Advocate.**

**VERSUS**

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

**.... Respondents.**

**For Respondents : Mr. Salil Trivedi, Advocate.**

\*\*\*

**(Per Mr. V.K. Kapoor, Administrative Member)**

Shri Prem Bharti has filed the present OA against the order of respondents dated 11.01.2008 (Ann.A-1) and 02.9.2003 (Ann.A-2).

The applicant has sought the reliefs that are as follows:-

- "(i) by an appropriate writ, order or direction, the impugned order dated 11.01.2008 (Ann.A-1), so far it relates to hold the applicant guilty of charges of creating new-sense and mis-behaviour with Senior Superintendent and imposed penalty of reduction of pay to the bottom of the time scale next below his present time scale for a period of two years with cumulative effect and the impugned order dt 02.09.2003 (Ann.A-2) be declared illegal & be quashed & set aside, as if the same were never issued against the applicant.
- (ii) by an appropriate writ, order or direction, the respondents may be directed to restore the pay scale, grade and pay of the applicant in pursuance of the impugned orders and refund the recovered amount along with interest at the rate of 12% per annum with all consequential benefits.
- (iii) Exemplary cost be imposed on the respdts for causing undue harassment to applicant.
- (iv) Any other relief(s) which this Hon'ble Tribunal thinks just and proper in the fact and circumstances pleaded above, may also be accorded to the applicant."

*[Signature]*

2. The factual matrix of the case is that applicant was working on the post of Technician gr.I, in scale of Rs.4500-7000 in NW Railway (workshop), Jodhpur. He was issued a memorandum of charge sheet for major penalty under rule 9 of the Railway Servants (Discipline and Appeal) rules, 1968 on 29.10.2002. The allegations against him were that while working on the said post on 22.10.2002 at about 09:00 hours, without talking he has slapped SCC (Paint) Shri D.C. Sharma in office (Ann.A-3). The applicant denied allegations leveled against him (Ann.A-4). The inquiry officer conducted detailed inquiry & submitted his report on 21.4.2003, applicant was directed to submit representation on the said inquiry report within a period of ten days (Ann.A-5). As per report of the inquiry officer respdt 3 inflicted punishment of reduction of pay of Shri Prem Bharti, T.No.9409/15 to the bottom of the time scale next below his present time scale for a period of five years with cumulative effect, vide order dated 02.9.2003 (Ann.A/2). The applicant filed an appeal before respdt 2 on 26.9.2003 against the said order, gave detailed representation and reminder (Ann.A-6, A-7). The appeal was rejected vide order dt 10.6.2005 by appellate authority. The applicant filed an OA 286/2004 before this Tribunal; vide order dt 28.11.2007, the OA was allowed & appellate order was set aside, the appellate authority was directed by Tribunal to decide the matter afresh in accordance with law and pass a speaking order. The appellate authority (respondent 2) passed an order dated 11.01.2008 in which penalty was reduced to punishment of present time scale for a period of two years with cumulative effect (Ann.A-1). Applicant has prayed that orders dt 11.01.2008 (Ann.A-1) & 02.9.2003 (Ann.A-2) be declared illegal & same be set aside.



3. Learned counsel for the respondents in reply has stated that applicant was guilty of misconduct and manhandling with Shri Dinesh Chandra Sharma. The inquiry report is quite clear & specific on the point that the applicant committed grave misconduct during the course of employment in office. The respdts has presented memorandum/letter written by applicant dt 07.10.2003 (Ann.R-1). After order dt 28.11.2007 in OA 286/2004, the appellate authority set aside the order of disciplinary authority & imposed a lesser penalty of reduction of pay for a period of two years with cumulative effect on 11.01.2008.

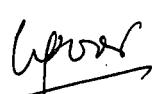
There was an admission on applicant's part in appeal on 07.10.2003 wherein he tendered written apology for this incident & assured not to repeat same in future (Ann.R-1). The punishment given by appellate authority is quite reasonable looking to nature of misconduct committed by applicant. There is no direct evidence of slapping his superior by the applicant but there was ample evidence of manhandling termed as misbehaviour & altercation (hatapai) on applicant's part with his superior, he was rightly found guilty for flagrant violation of official conduct, thus the said punishment was rightly imposed upon him. On written apology from applicant, appellate authority reduced quantum of punishment vide order dt 11.01.2008 (Ann.A-1). As much relief is given by appellate authority, no further interference is called for.

4(a). Learned counsel for the applicant in arguments has stated that the applicant was given charge sheet as per Ann.A-3; he is said to have slapped his senior Shri D.C. Sharma. Shri D.C. Sharma was said to be speaking in a loud voice, the enquiry report is submitted as per Ann.A-5 in which concluding note is that none saw the applicant slapping Shri D.C. Sharma. The matter of altercation (hatapai) is not

Gyan

proved, no evidence of this manhandling was given. The disciplinary authority downgraded him to lower scale withholding 05 increments for a period of 05 years with cumulative effect. This order was challenged before the appellate authority & the said punishment was maintained on 10.6.2005 (Ann.A-8). In OA 286/2004 vide order dt 28.11.2007, directions were given by Tribunal to appellate authority/ respondents to pass a speaking order. The appellate authority passed an order on 11.01.2008 by which punishment was reduced to withholding of 02 increments with cumulative effect. As per rule 22 of Railway Servants Discipline & Appeal, rules, 1968, this is to ensure that whether statutes were followed or not. The appellate authority is said to have reduced the quantum of punishment; but he cannot impose fresh penalty. No show cause notice or charge of creating nuisance & mis-behaviour is given, there is only one charge of slapping, which is not proved. In mis-behaviour & nuisance, there is wide difference; no evidence of altercation (hatapai) is explicit. In support of his contentions, the applicant has relied upon (1990) 14 ATC 823 (SC), (2001) 1 SCC 416, (1992) 1 SLR 299, (2002) SCC (L&S) 1028. The applicant has tried to impress that punishment other than charge cannot be maintained. The appellate authority cannot pass fresh orders, nor inflict punishment other than chargesheet. The order should be clear & specific, cannot be passed on conjectures and surmises. The applicant has also quoted OA 261/2003 dt 01.10.2004 stating that an appellate authority cannot pass fresh/new orders.

4(b). Learned counsel for respondents in arguments has stated that in disciplinary matter, this is to be seen as to whether proper procedure is adopted or not. The report of enquiry officer reveals that evidence is



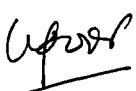
properly discussed; the rule of natural justice is followed. There is no illegality or irregularity on the face of record, court has ample powers to take decision. An act of slapping or altercation (hatapai) in office are a serious offence, a person/employee can be convicted; this clearly tantamount to misbehaviour/mânhandling; which is unbecoming of a government servant. There is a thin line between slapping & hatapai; appellate authority has powers to enhance or reduce the punishment. An evidence taken by enquiry officer etc. cannot be re-appreciated by the Tribunal. The offence of applicant is complete in itself, much relief is already given by the appellate authority. The respondents have relied upon (1999) SCW 4802 in support of their contentions.

5. The applicant was working on the post of Technician gr.I in workshop Jodhpur during year 2002-2003. On 22.10.2002 at about 09:00 am, he went to his office, Shri D.C Sharma, SCC (Paint) was sitting there in office, without talking, he slapped Shri D.C. Sharma who was working on his table. The enquiry officer was appointed to enquire into allegation leveled against the applicant, who was given copy of memorandum on 29.10.2002 & asked to furnish reply within ten days. The applicant gave reply on 07.11.2002, denied allegations leveled against him (Ann.A-4). The enquiry officer conducted detailed enquiry, the main allegation against the applicant is that without talking he slapped Shri D.C. Sharma. The detailed enquiry report was given by the enquiry officer on 15.02.2003, in concluding remarks, it is mentioned that no one saw him slapping Shri D.C. Sharma but the applicant went behind the chair of Chhagan Lal towards Shri D.C. Sharma, held altercation (hatapai) while Shri D.C. Sharma was sitting on his chair. The statements of witnesses are described, Shri Chhagan



Lal and Shri K.C. Meena, both have testified to the fact that there was an altercation (hatapai) between the applicant & Shri D.C. Sharma. The other witnesses Shri Kailash Solanki & Shri Darshan Sharma also spoke of altercation between the two. The other main witness Shri N. Phillips makes it abundantly clear that none saw Shri D.C. Sharma being slapped by applicant as per enquiry report dated 15.02.2003.

6. The incident took place on 22 Oct, 2002 at about 09:00 am in respondents' office, a memo/letter given to applicant on 29.10.2002; that relates to around 09:30 am, severe slapping by the applicant to Shri D.C. Sharma was made. The applicant has argued that charge of slapping was not proved, thus no case was made out against him. It is apparent on the face of record that there was an altercation (hatapai) between the applicant and Shri D.C. Sharma while the latter was sitting on his chair and doing his office work between 09:00 - 09:30 am on 22 Oct, 2002. This relates to grave misconduct on the part of applicant as regards manhandling of Shri D.C. Sharma. No one saw the applicant slapping Shri D.C. Sharma but the spot witnesses have testified to these facts that Shri D.C. Sharma was sitting on his chair doing his office work on 22 Oct, 2002; at that time 09:00-09:30 am, the applicant came from the back side of Shri Chhagan Lal towards Shri D.C. Sharma, whom he manhandled. There was an altercation (hatapai) between the applicant and Shri D.C. Sharma due to which an unpleasant situation was created in respondents' office. There is thin line of distinction between slapping and manhandling by the applicant to Shri D.C. Sharma. Because of rowdy & harsh behaviour of applicant, an unpleasant situation was created for which applicant was responsible. The witnesses have deposed and confirmed



in their testimony the site map where the applicant of his own went towards Shri D.C. Sharma, there was an altercation between two on the said site in office. Thus, the benefit of doubt cannot be given to the applicant as there exists a thin line of difference between the act of slapping & manhandling, due to which an altercation (hatapai) took place on the office site. The act of manhandling and altercation with his senior Shri D.C. Sharma, the applicant's action is unbecoming of a Government servant thus, punishment of withholding five increments was awarded to him vide order of the respondents dated 02.9.2003

7. The applicant appealed against this order dt 02.09.2003. The applicant moved to CAT Jodhpur bench in OA 286/2004; vide order dt 28.11.2007 the OA was allowed and impugned appellate order dt 10.6.2005 was set aside. The Tribunal gave directions to the appellate authority to provide an opportunity of hearing to the applicant and pass a speaking order. Subsequently, vide order dt 11 Jan, 2008, an order was passed by the appellate authority whereby punishment given to the applicant by the disciplinary authority was reduced to withholding of two increments. The applicant also gave an application dt 07.10.2006 to pardon him, thus the quantum of punishment was reduced as stated above. An act of slapping was not proved, an altercation (hatapai) between applicant and Shri D.C. Sharma was proved beyond doubt. Because of this unwarranted incident, an unpleasant situation prevailed at the moment in the office which was a creation of the applicant. The appellate authority held that by this act of omission and commission exhibited misbehaviour & misconduct on applicant's part, who acted in a manner unbecoming of a railway servant thereby violated Rule 3.1 (ii) and (iii) of Railway Service



Conduct Rules, 1966. In this order dt 11 Jan, 2008 the penalty of five years pay reduction was set aside and direction was given to impose a fresh penalty of reduction of pay to the bottom of the time scale next below his present time scale for a period of two years with cumulative effect. The applicant has strongly contended that appellate authority can either enhance or reduce the punishment but cannot impose fresh punishment. Infact, the language quoted by appellate authority in order dt 11 Jan, 2008 is misconstrued to the extent that the penalty given by disciplinary authority was reduced to the level of stoppage of two increments with cumulative effect. The appellate authority is not a legal expert, thus he was unable to follow the legal intricacies.

8. Learned counsel for the applicant has relied upon citation of apex court (1990) 14 AT cases 823 **State of Haryana vs. Om Prakash, constable** that relates to no notice for the allegations issued. It was held by apex court that punishing authority was not entitled to take into consideration the alleged conduct of fabrication while imposing punishment. In case of **Ashok Kumar Bhatia vs Punjab State Cooperative Supply and Marketing Federation Ltd. & Anr** 1992 (1) SLR 299 of Punjab & Haryana High Court relates to charge distinct from alleged allegations, on changed or different charges, penalty can not be imposed. The case of **Sher Bahadur vs UOI & Ors** 2002 SCC (L&S) 1028 relates to charge proved being erroneous and without any evidence to link appellant with alleged misconduct are not to be sustained. Here, the allegations are clear & specific, the findings of disciplinary authority revolve round an act of severe slapping & having an altercation with his senior officer; thus applicant gets no relief from this citation. The charges/allegations as regards slapping, manhandling

W.M.

and mis-behaviour have a thin line of distinction, thus the act of slapping covers manhandling & mis-behaviour that led to altercation (hatapai) between applicant and Shri D.C. Sharma. The applicant has also cited the case of **High Court of Judicature at Bombay through its Registrar vs. Shashikant S. Patil & Anr** 2000 SCC (L&S) 144 that speaks of enquiry report, departmental enquiry and disciplinary authority; it was held that findings of the enquiry officer are not final, decision rests with the disciplinary authority. The case of **Deva Ram vs. Union of India & Ors** CAT, Jodhpur Bench OA no.261/2003 points to opportunity to the applicant to defend himself on the allegations, this relates to past incidence & physical quarrels with the fellow employees and does not straightaway apply to the present matter. It is worth mentioning that sufficient opportunity was given to the applicant to defend his case so much so he prayed for mercy before appellate authority, for reducing the quantum of punishment.

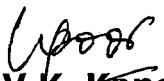
9 (i). The respdts have relied upon the citation of **Director General of Police & Ors. vs. R. Janibasha** 1999 AIR SCW 4802 it relates to the fact that finding given by the disciplinary authority, Tribunal cannot re-appreciate evidence and substitute its own findings in place of findings given by disciplinary authority. On the face of record & evidence available, *prima facie* case is made out against applicant for his act of slapping & having altercation with his senior. Thus, looking to the evidence given by the witnesses at site, the charges of mis-behaviour and manhandling by the applicant is proved, the appellate authority took a liberal view to reduce the quantum of punishment. There is no strenuous material to be taken into account for holding applicant guilty of the charges against him. The finding from the record, site map and

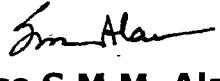


exhaustive findings given by enquiry officer are sufficient to prove guilt committed by him. The disciplinary authority punished applicant to withhold five increments with cumulative effect which was reduced to stoppage of 02 annual increments with cumulative effect in appeal, on applicant's request for pardoning him. The rules of natural justice and prescribed procedure were duly followed and much liberal view was adopted to punish applicant though he committed grave misconduct and severe manhandling of his senior officer Shri D.C. Sharma.

9 (ii). The citation **High Court of Judicature at Bombay vs. Shashikant S. Patil & Anr.** – 2000 SCC (L&S) 144 speaks of disagreement of disciplinary authority with the findings, final decision rests with disciplinary / punishing authority. The disciplinary authority has arrived at final conclusion in the matter & demoted applicant for 05 years. The observation/conclusions arrived at by this authority are quite clear & specific; which cannot be termed as arbitrary. As per evidence, the act of slapping to his senior & having an altercation with his senior are proved beyond doubt. Thus the applicant cannot be given a benefit of doubt, after much lenient view is taken in appeal.

10. In the light of observations/deliberations made above, no case is made out in applicant's favour, he is not entitled for any relief in this case. Thus, there is no point of intervention in the orders of respdts dt 11.01.2008 (Ann.A-1) & 02.9.2003 (Ann.A-2). Resultantly, the present O.A is hereby dismissed. No order as to costs.

  
[V.K. Kapoor]  
Administrative Member

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

दिनांक १७/१२/१५ के अदेशानुसार  
मेरी उपस्थिति वे १८/१२/१६  
को ताग ~~मृत्यु~~ के लिए गए।

अनुग्रह अधिकारी  
केन्द्रीय इमारतीकरण अधिकरण  
जोधपुर नगरपाली, जोधपुर

R/C  
2/10  
23.2.10

Ref  
28/2/10